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Federal Register

Briefing on How To Use the Federal Register
For information on the briefing in St. Louis, MO, see
announcement on the inside cover of this issue.



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THE FEDERAL REGISTER

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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR part 1d, which defines fruits, vegetables, and other perishable commodities as prescribed by section 302(a) of the Immigration Reform and Control Act of 1986, Public Law 99-603, 100 Stat. 3359 (IRCA). This rule will assist the United States Department of Justice, Immigration and Naturalization Service (INS) in determining the special agricultural workers to be admitted into the United States or to have their status adjusted to that of temporary legal residents. In particular, this rule provides that field work performed by aliens with respect to the commodity "sod" does not meet the definition of "seasonal agricultural services" and, thus, an alien who performed field work with respect to the commodity "sod" does not qualify for admission or adjustment of status to that of temporary legal resident under the Special Agricultural Worker (SAW) Program. This rule also will enable the Secretary of Labor to relieve the reporting burden of certain employers presently required under 29 CFR part 502 to file quarterly Work-Day Reports (Form ESA-92), as prescribed by section 210A(b)(2) of the INA, 8 U.S.C. 1161(b)(2).

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Al French, Coordinator of Agricultural Labor Affairs, Economic Analysis Staff, room 227-E, Administration Building, United States Department of

Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250-1400, telephone (202) 720-4737.

SUPPLEMENTARY INFORMATION: Section 302(a) of the IRCA added section 210 to the Immigration and Nationality Act (INA), 8 U.S.C. 1160, to create the SAW Program under which an alien who performed "seasonal agricultural services" for at least 90 man-days during the 12-month period ending May 1, 1986, and who was otherwise admissible as an immigrant to the United States, could apply to the Attorney General of the United States for admission or adjustment of status to that of an alien lawfully admitted for temporary residence. Subsequently, such a SAW may be eligible for adjustment of status to that of permanent resident. SAWs are not required to continue working in agriculture and are free to seek employment in any occupation or industry.

Section 210(h) of the INA, 8 U.S.C. 1160(h), directed the Secretary of Agriculture to publish regulations defining the fruits, vegetables, and other perishable commodities in which field work related to planting, cultural practices, cultivating, growing, and harvesting will be considered "seasonal agricultural services," the performance of which would qualify an alien for inclusion in the SAW Program. On June 1, 1987, at 52 FR 20372-76 (codified at 7 CFR part 1d), the United States Department of Agriculture (USDA) published its final rule, including the determination that sod was not a fruit, vegetable, or other perishable commodity within the meaning of section 210(h) of the INA. Thereafter, sod farmers and illegal aliens who had performed field work with respect to sod during the relevant period for SAW eligibility brought suit in the United States District Court for the Northern District of Illinois seeking to invalidate the rule insofar as it excluded sod from "other perishable commodities" encompassed by the SAW Program. *Heriberto Morales, et al. v. Clayton K. Yeutter, et al.*, No. 87-C-20522 (N.D. Ill.).

On March 29, 1988, at 52 FR 10064 [codified at 8 CFR part 210], INS published its final rule setting forth the procedures and requirements for SAW applications. The INS regulations at 8 CFR 210.1(p) define "qualifying agricultural employment" for purposes of SAW status as the performance of

"seasonal agricultural services" as that term is defined in regulations issued by the Secretary of Agriculture at 7 CFR part 1d.

Section 303(a) of the IRCA added section 210A to the INA, 8 U.S.C. 1161, to create the Replenishment Agricultural Worker (RAW) Program under which additional special agricultural workers, known as RAWs, may be admitted or otherwise adjusted to the status of lawful temporary residents in any fiscal year (FY), beginning in FY 1990 and ending in FY 1993, to meet a shortage of workers to perform "seasonal agricultural services." Section 210A of the INA directs the Secretaries of Agriculture and Labor, before the beginning of each FY, to determine jointly the number (if any) of RAWs who should be admitted or otherwise adjusted to the status of lawful temporary residents to meet a shortage of workers to perform "seasonal agricultural services." This number is referred to as the "shortage number." Section 210A of the INA further provides that the Attorney General shall provide for the admission or adjustment of a number of aliens equal to the shortage number (if any). Such number may not exceed the annual numerical limitation, which is set by a statutory formula based upon a percentage of those individuals who had their status adjusted under the SAW Program, less the number of SAWs, including RAWs, who continue to work in "seasonal agricultural services," and adjusted to take into account any change in the number of nonimmigrant aliens admitted under section 101(a)(15)(H)(ii)(a) of the INA (H-2A workers) to perform temporary "seasonal agricultural services." Section 210A(a)(7) of the INA, 8 U.S.C. 1161(a)(7), provides procedures under which a group or association representing employers in "seasonal agricultural services" may appeal to the Secretaries of Agriculture and Labor for an emergency increase in the shortage number. RAWs admitted or otherwise adjusted under section 210A are required by section 210A(d)(5), 8 U.S.C. 1161(d)(5), to perform a specified amount of "seasonal agricultural services" in each FY in order to avoid deportation and to be eligible subsequently for naturalization.

On August 11, 1989, at 54 FR 32985 (codified at 7 CFR part 1e and 29 CFR part 503), USDA and the United States

Department of Labor (DOL) published jointly their final rule setting forth the methodology for determining the shortage number. On May 21, 1990, at 55 FR 20775 (codified at 8 CFR part 210a), INS published its final rule setting forth the procedures and requirements for aliens to register and apply for RAW status. The INS regulations implementing the RAW Program at 8 CFR 210a.1(1) incorporate by reference the USDA definition of "seasonal agricultural services" at 7 CFR part 1d.

Section 210A(b)(2) of the INA, 8 U.S.C. 1161(b)(2), requires employers to report to the Government certain information about the amount of work performed by SAWs (including RAWs) in "seasonal agricultural services." On September 9, 1988, at 53 FR 35154 (codified at 29 CFR part 502), DOL published its final rule regarding the reporting and employment requirements for employers of SAWs in "seasonal agricultural services." Because the exclusion of the commodity "sod," as well as certain other commodities, from the definition of "seasonal agricultural services" was in litigation and because of the need to have reliable data concerning the performance of field work in such "contested crops" in the event such crops were to be included in the SAW Program, the regulations at 29 CFR part 502 required employers to report the number of work-days performed in sod and the other contested crops.

On September 26, 1988, the United States District Court for the Northern District of Illinois enjoined the exclusion of sod from "seasonal agricultural services" and remanded the regulation to USDA to reconsider the rule in light of its decision. *Morales v. Lyng*, 702 F. Supp. 161 (N.D. Ill. 1988). Because the statutory deadline for aliens to apply for SAW status was only one month away, the court ordered INS to accept "skeletal" applications for SAW status from sod workers in order to preserve their rights in the event that USDA determined that field work with respect to sod met the definition of "seasonal agricultural services." USDA conducted further notice and comment rulemaking and concluded that sod should continue to be excluded from the SAW regulation. 53 FR 50375 (Dec. 15, 1988). The plaintiffs renewed their suit in the district court, which on June 11, 1990, ordered that sod be included in the definition "other perishable commodities" at 7 CFR 1d.7. *Heriberto Morales, et al. v. Clayton K. Yeutter, et al.*, No. 87-C-20522 (N.D. Ill.). The Government did not seek a stay of the district court order and on November 23,

1990, at 55 FR 48831, USDA published a final rule in the *Federal Register* redefining sod as a result of the decision by the district court.

The Government filed an appeal of that decision to the United States Court of Appeals for the Seventh Circuit, which reversed the decision of the district court and granted judgment for USDA. *Heriberto Morales, et al. v. Clayton K. Yeutter, et al.*, No. 90-2787 (7th Cir. December 18, 1991). Thus, the original determination by USDA that sod was not a fruit, vegetable, or other perishable commodity within the meaning of "seasonal agricultural services" for purposes of section 210(h) of the INA, 8 U.S.C. 1161(h), has been sustained.

As a result of the decision issued by the Court of Appeals in *Morales v. Yeutter*, USDA is rescinding its November 23, 1990, final rule that included sod as an "other perishable commodity." The effect of this rule is retroactive and applies to field work with respect to sod conducted during the period relevant to SAW applicants. Because the INS regulations implementing the SAW Program incorporate by reference the definition of "seasonal agricultural services" at 7 CFR part 1d, the effect of this rule will be that field work with respect to sod will not be considered "qualifying agricultural employment" for purposes of SAW status. In addition, because field work with respect to sod does not meet the definition of "seasonal agricultural services," field work with respect to sod will not be considered in the estimates made in connection with the RAW program under section 210A(a) of the INA; groups or associations representing employers with respect to sod will not be able to request an emergency increase in the shortage number under section 210A(a)(7) of the INA; and field work with respect to sod will not count toward the number of work-days in "seasonal agricultural services" required to be performed by RAWs under section 210A(d)(5) of the INA. Finally, this rule will enable the Secretary of Labor to relieve the reporting burden of certain employers presently required under 29 CFR part 502 to file quarterly Work-Day Reports (Form ESA-92), as prescribed by section 210A(b)(2) of the INA, 8 U.S.C. 1161(b)(2).

The decision of the Court of Appeals sustains the original rule that was promulgated by USDA through rulemaking. Hence, pursuant to 5 U.S.C. 553, good cause is found that further notice and opportunity for public

comment is unnecessary, and good cause is found to make this rule effective less than 30 days after publication in the *Federal Register*.

The Deputy Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule.

This final rule has been reviewed in accordance with Executive Order No. 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State and local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is intended to have retroactive effect and is effective as of June 1, 1987, the date of the original final rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

List of Subjects in 7 CFR Part 1d

Immigration, Rural Labor.

Accordingly, part 1d., title 7, Code of Federal Regulations, is amended as follows:

PART 1d—RURAL LABOR—IMMIGRATION REFORM AND CONTROL ACT OF 1986—DEFINITIONS

1. The authority citation for part 1d continues to read as follows:

Authority: 8 U.S.C. 1160.

2. Section 1d.7 is revised to read as follows:

§ 1d.7 Other perishable commodities.

Other perishable commodities mean those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of field work, and have critical and unpredictable labor demands. This is limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties, lettuce seed, spanish reeds (*arundo donax*), spices, sugar beets, and tobacco. This is an exclusive list, and anything not listed is excluded. Examples of commodities that are not included as perishable commodities are animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, forest products, fur bearing animals and rabbits, hay and other forage and silage, honey, horses and other equines, livestock of all kinds including animal specialties, poultry and

poultry products, sod, sugar cane, wildlife, and wool.

Daniel A. Sumner,
Deputy Assistant Secretary for Economics.
[FR Doc. 92-8061 Filed 4-7-92; 8:45am]
BILLING CODE 3410-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0752]

Rules Regarding Delegation of Authority; Expansion of Authority to Reserve Banks to Approve Applications Under the Bank Holding Company Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This amendment to the Board's Rules Regarding Delegation of Authority (Rules) would expedite applications processing by expanding the authority of the Federal Reserve Banks to approve certain applications under sections 3 and 4 of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1841 *et seq.*). Specifically, this amendment would delete certain provisions of the Board's Rules to permit the Reserve Banks to approve applications involving banking organizations that rank among a state's five largest banking organizations or among the 50 largest banking organizations in the United States, or the acquisition of certain large nonbanking companies by bank holding companies with over \$1 billion in assets.

EFFECTIVE DATE: April 8, 1992.

FOR FURTHER INFORMATION CONTACT: James Burke, Senior Economist (202/452-2612), or Dean F. Amel, Economist (202/452-2911), Division of Research and Statistics; or Pamela G. Nardolilli, Senior Attorney (202/452-3289), or Elizabeth Thede, Staff Attorney (202/452-3274), Legal Division. For the hearing impaired only, Telecommunications Service for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Board has delegated authority to the Reserve Banks to approve applications under the BHC Act to acquire banks and nonbank companies, unless the parties to the application meet certain rank or size criteria or the proposal raises new or important policy issues. Under these Rules, the Board must review any proposal that involves two or more banking organizations that rank among a state's five largest banking

organizations, or among the 50 largest banking organizations in the United States.¹ The Board also has reserved authority to review any proposal that would involve the acquisition by a banking organization with more than \$1 billion total assets of a nonbanking organization that appears to have a significant presence in a permissible nonbanking activity.²

The Board is now amending its Rules to delegate authority to the Reserve Banks to approve such acquisitions. This will expedite the processing of these types of applications. The amendment would permit Reserve Banks to approve applications on delegated authority where the two banking organizations are among the state's five largest banking organizations, or are among the 50 largest banking organizations in the United States. The amendment also would allow Reserve Banks to approve on delegated authority certain large nonbanking acquisitions. The Board would continue to review all applications that exceed the Department of Justice Guidelines in any relevant geographic banking market, as well as applications that involve a significant legal or policy issue or where a substantive written objection has been properly made.

Regulatory Flexibility Analysis

This amendment concerns the processing of applications only and will result in expedited applications processing. Accordingly, it will reduce the burden on applicants and will not have an adverse economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act Analysis

This amendment will not adversely affect the paperwork burden for individuals, small businesses, and other "persons," as defined in the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This amendment will expedite applications processing and reduce paperwork requirements.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System, Holding companies, State member banks.

For the reasons set forth in the preamble, and pursuant to its authority

¹ As measured by total domestic deposits within the relevant area. 12 CFR 265.11(c)(11)(v)(A).

² 12 CFR 265.11(c)(11)(vi)(B). Although other situations may involve the issue of significant presence, the Board generally regards any company that ranks among the 20 largest independent firms in any industry as having a significant presence.

under the Bank Holding Company Act and section 11(k) of the Federal Reserve Act, the Board of Governors is amending 12 CFR part 265 to read as follows:

PART 265—[AMENDED]

1. The authority citation for part 265 continues to read as follows:

Authority: Secs. 11(i) and (k) of the Federal Reserve Act (12 U.S.C. 248(i) and (k)).

§265.11 [Amended]

2. In § 265.11, paragraph (c)(11)(v)(A) is removed and paragraphs (c)(11)(v)(B) and (C) are redesignated as paragraphs (c)(11)(v)(A) and (B), respectively.

3. In § 265.11, paragraph (c)(11)(vi) is revised to read as follows:

§265.11 Functions delegated to Federal Reserve Banks.

(c) * * *

(11) * * *

(vi) With respect to nonbank acquisitions, the nonbanking activities involved do not clearly fall within activities that the Board has designated as permissible for bank holding companies under § 225.25(b) of Regulation Y.

Board of Governors of the Federal Reserve System, April 2, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 92-8043 Filed 4-7-92; 8:45 am]
BILLING CODE 6210-01-F

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies Definitions and Contracts With 7(a) Lenders

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: On November 15, 1990, the President signed Public Law 101-574, The Small Business Administration Reauthorization and Amendment Acts of 1990. In order to implement the statute, SBA has previously promulgated a final rule (56 FR 41055) that increased the maximum loan amount from \$750,000 to \$1,000,000 for loans made by state and local development companies that meet specific public policy goals. The rule adopted here provides definitions for the terms "minority small business" and "business district revitalization" contained in the public policy goals final

rule. This rule also revises the existing definition of "rural areas".

In addition, this rule codifies procedures for the purpose of allowing certain development companies which are certified by SBA pursuant to section 503 of the Small Business Investment Act of 1958 (known as Certified Development Companies, 503 companies, or CDCs) to contract with participating lenders to process and service loans made pursuant to section 7(a) of the Small Business Act.

EFFECTIVE DATE: April 8, 1992.

FOR FURTHER INFORMATION CONTACT:

LeAnn M. Oliver, Deputy Director for Program Development, Office of Rural Affairs and Economic Development, 409 3d Street, SW., suite 8300, Washington, DC 20418. Telephone (202) 205-6485.

SUPPLEMENTARY INFORMATION: The proposed rule published for comment on November 29, 1991 (56 FR 60942) is adopted as final. One (1) comment was received and is addressed below.

This rule defines the terms "Minority Business" and "Business District Revitalization" as required to explain the new public policy goals for the development company program which were established in Public Law 101-574. "Business district revitalization" is limited to those areas with a recognized plan for redevelopment or revitalization. This will ensure the best use of targeted resources by funneling them to areas which have previously been determined to be in need of revitalization and for which there is an existing plan that the 504 resources will supplement.

The definition of "Minority Business" incorporates existing SBA regulations, codified at 13 CFR part 124, governing SBA's Minority Small Business and Capital Ownership Development (MSB/COD or 8(a)) program. 13 CFR 124.105(b) lists designated groups, members of which SBA presumes to be socially disadvantaged because they may have been subjected to racial or ethnic prejudice or cultural bias because of their affiliation with the group. The list contained in that regulation has been compiled over a period of time by SBA rulemaking after notice and comment and by legislation. SBA has determined that using the same list in conjunction with the development company program will most effectively promote the will of Congress as expressed in the new legislation. The definition also sets a 51% minority ownership and control threshold. A lower threshold would permit targeted benefits to flow to non-minority businesses. A higher threshold could exclude minority-owned businesses which have non-minority partners.

The definition of "Rural Area" in the present 13 CFR 108.2 is amended to delete the present requirement that a subdivision in a rural county have a population of under 20,000. Public Law 101-574 does not contain the 20,000 person limit that appeared in prior proposed legislation. The effect of this change is to allow a non-metropolitan county in its entirety to qualify as a rural area. Paragraph 2 of the definition is amended only by rewording previous language for the sake of clarity, though the substance remains the same.

The one comment received relates to the definition of "Rural Area". The commenter suggested that the definition was incompatible with the circumstances of certain counties in California. The rule is specifically designed to allow SBA flexibility in meeting such situations by providing the opportunity to declare a portion of a metropolitan county rural. The concern described in the commenter's letter would be alleviated by use of the option provided in subparagraph (2).

The present definition of "Job Opportunity" is moved from 13 CFR 108.503 to § 108.2 for the sake of organizational consistency.

On November 5, 1990 the President signed Public Law 101-515, the Appropriation Act for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the Fiscal Year ending September 30, 1991. One of the provisions of this statute allows 503 companies to contract with 7(a) lenders to process and service 7(a) guaranteed loans. The regulation being adopted amends 13 CFR 108.503-1(e) to incorporate this change to section 503(e)(3) of the Small Business Investment Act. The amended section permits 503 Companies to contract with lenders participating in SBA's guaranteed lending program, authorized pursuant to section 7(a) of the Small Business Act, to prepare loan applications for and service such loans. Paragraph (3) sets the requirements for providing such services, by addressing the nature of the agreement between the parties, requiring that the participating 7(a) lender have a valid Participation Agreement (SBA Form 750), requiring that the 7(a) lender be authorized to conduct lending activities within the State, addressing reasonable fees and charges to be assessed to the borrower, and assuring that the compensation received by the 503 company is reasonable.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA has determined that this proposal does not constitute a major rule for the purposes of Executive Order 12291. The annual effect of this rule on the national economy is not expected to attain \$100 million. Loans to minority businesses and for business district revitalization are presently made under existing authority. It is not expected that the definitions of such terms set forth in this rule would have a significant effect on the number of applications or dollar value of such loans. Specifically, in FY 90, 109 loans averaging \$172,000 each were made to minority firms. No more than \$10 million in additional demand could result. The business revitalization definition is also unlikely to result in more than \$10 million in additional demand and the current definition of rural area is not, in practice, significantly different from the revised definition adopted here. The impact of 503 companies packaging and servicing 7(a) loans under contract will be less than \$10 million based upon information provided by the industry reflecting the interest expressed in undertaking such actions.

This rule will not result in a major increase in costs or prices to consumers, individual industries, Federal, state and local government agencies or geographic regions, and will not have adverse effects on competition, employment, investment productivity, or innovation. SBA certifies that these rules do not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the provisions of this rule may have a significant economic impact on a substantial number of small entities. The following analysis of the provisions is provided within the context of the review prescribed in the Regulatory Flexibility Act (5 U.S.C. 603).

1. These regulations are promulgated:

(a) To implement Public Law 101-574, cited above and 101-515; and,

(b) To conform existing regulations to the requirements of the new law.

2. The legal bases for these regulations are section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6); sections 308(b) and 503(a)(2) of the Small Business Investment Act, 15 U.S.C. 687(b) and 697(a)(2); and section 136 of Public Law 100-590.

3. These regulations, taken together, apply to all 503 companies and to all

small concerns applying, or contemplating an application, for assistance under this program. While it is impossible to estimate their number, we can say that 1,517 commitments for debenture guarantees were made by SBA in FY 1991.

4. There are no additional reporting, recordkeeping and other compliance requirements inherent in these rules.

5. There are no Federal rules which duplicate, overlap or conflict with these rules.

6. There are no significant alternate means to accomplish the objectives of these regulations.

For purposes of the Paperwork Reduction Act, Public Law 98-115, 44 U.S.C. ch. 35, SBA certifies that these rules impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set forth above, part 108 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c.

2. Section 108.2 is amended by adding definitions of the following terms in the appropriate alphabetical order: "Business District Revitalization", "Job Opportunity", and "Minority Business"; and by revising the definition of "Rural Area" to read as follows:

§ 108.2 Definitions.

Business District Revitalization means activity in a business area of a community with a recognized revitalization or redevelopment plan that encourages business development as a means of enhancing the economic productivity of such area.

Job Opportunity means:

(1) Full time (or equivalent) permanent employment created as a direct result of the project within two years of receipt of permanent financing under this part, or

(2) Full time (or equivalent) permanent employment retained that would have been lost to the community but for the project financed under this part.

Minority Business means a small business concern which is at least 51% unconditionally owned and controlled by an individual(s) who is a member of a group identified in § 124.105(b) of this title.

Rural Area means:

(1) Any political subdivision or unincorporated area in a non-metropolitan county (as defined by the Economic Development Division, Economic Research Service, U.S. Department of Agriculture) or the equivalent thereof; or (2) Any political subdivision or unincorporated area in a metropolitan county or the equivalent thereof, which SBA may determine to be rural if such political subdivision or area has a resident population of less than 20,000.

3. Section 108.503-1 is amended by revising paragraph (e) to read as follows:

§ 108.503-1 Eligibility requirements for 503 Companies.

(e) Permissible functions of a 503 company. (1) A 503 company shall provide financial assistance in participation with SBA under title V of the Small Business Investment Act and this part and maintain an activity level set forth in § 108.503-3(c). Such company may participate in the 501 and 502 loan programs if the qualifications set forth in § 108.501 or § 108.502 are met.

(2) A 503 Company is encouraged to marshal resources for the benefit of small business in a manner that will result in community economic development. Accordingly, a 503 company may also help small concerns obtain other assistance from SBA or other government and non-government programs by preparing loan applications and facilitating management and procurement assistance.

(3) A 503 company may prepare, close and service deferred participation loans under contract with lenders participating under section 7(a) of the Small Business Act provided:

(i) A written agreement approved by SBA, setting forth roles and relationships and terms and conditions, exists between the 503 company and the participating 7(a) lender;

(ii) The participating 7(a) lender has a valid Participation Agreement (SBA Form 750) with SBA and affirms its responsibility under such agreement to SBA, notwithstanding its contractual relationship with the 503 company, with respect to any loan closed or serviced by a 503 company on its behalf;

(iii) The 7(a) lender is authorized to conduct lending activities within the State;

(iv) Fees and charges assessed the borrower are limited to those permitted by 13 CFR part 120 and no additional costs are charged to the borrower by the participating lender or the 503 company

as a result of the contractual relationship with the 503 company; and (v) The compensation received by the 503 company is reasonable relative to the services performed pursuant to the contract.

(4) A Small Business Investment Company (SBIC) licensed by SBA may not be certified as a 503 company nor may a 503 company be an SBIC.

Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans).

Dated: March 10, 1992.

Patricia Saiki,
Administrator.

[FR Doc. 92-8112 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900-AF53

Servicemen's and Veterans' Group Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs is amending its regulations relating to Servicemen's and Veterans' Group Life Insurance to reflect that the law provides for an increase in the maximum amount of Servicemen's and Veterans' Group Life Insurance which may be purchased.

EFFECTIVE DATE: April 6, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. Gregory C. Hosmer, Insurance Specialist/Attorney, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 951-5710.

SUPPLEMENTARY INFORMATION: The "Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991," Public Law 102-25, in part, amends sections 1967 and 1977 (formerly sections 767 and 777) of title 38, United States Code. The amendments provide for an increase from \$50,000 to \$100,000 in the maximum amount of Servicemen's and Veterans' Group Life Insurance.

The Department of Veterans Affairs has determined that prior publication for notice and public comment is, pursuant to 38 CFR 1.12, impracticable and contrary to the public interest. There exists good cause for making these final

regulatory amendments effective without prior public comment. Since the amendments merely reflect statutory changes in the law, allowing public comment would have no effect on implementing the changes mandated by Congress. Additionally, the cost to the Government, ultimately a burden to the taxpayer, for prior publication is saved.

The Secretary of Veterans Affairs hereby certifies that these final regulations will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these final regulations are, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these final regulations will affect only certain government life insurance policyholders. They will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The Department of Veterans Affairs has also determined that these final regulations are nonmajor in accordance with Executive Order 12291, Federal Regulations. These regulations will not have a \$100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not otherwise have any significant adverse economic effects.

The catalog of Federal Domestic Assistance Program number for these regulations is 64.103.

List of Subjects in 38 CFR Part 9

Armed forces, Life insurance, Veterans.

Approved: February 7, 1992.

Edward J. Derwinski,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 9 is amended as set forth below:

1. The authority citation for part 9 continues to read as follows:

Authority: 72 Stat. 1114, 79 Stat. 880, 84 Stat. 326, 88 Stat. 165 (38 U.S.C. 501), subchapter III, chapter 19, unless otherwise noted.

§ 9.2 [Amended]

2. In § 9.2, paragraphs (a) and (b) are amended by removing the date "January 1, 1986" from both paragraphs, and add in its place the date "April 6, 1991" in both paragraphs.

3. In § 9.3, paragraph (e) and its authority citations are revised to read as follows:

§ 9.3 Applications.

(e) Members who met the requirements for full-time Servicemen's Group Life Insurance coverage under § 9.1(a)(3) or Veterans' Group Life Insurance coverage under § 9.3(f) as of May 1, 1991, are eligible to obtain increased coverage up to a maximum of \$100,000 if the member—

(1) Is insured under Servicemen's Group Life Insurance or Veteran's Group Life Insurance as of May 1, 1991; or

(2) Within one year after May 1, 1991, reinstates Servicemen's Group Life Insurance or Veterans' Group Life Insurance that had lapsed for nonpayment of premiums; and

(3) The member submits a written application for the increased coverage to the office established in § 9.1(j) within one year after May 1, 1991.

(Authority: 38 U.S.C. 1977)

4. Section 9.4 is revised to read as follows:

§ 9.4 Amount of Insurance.

Effective April 6, 1991, Servicemen's Group Life Insurance is issued in the amount of \$100,000 unless the insured member elects in writing—

(a) To not be insured, or

(b) To be insured in any lesser amount evenly divisible by \$10,000.

The \$100,000 coverage does not apply to those members separated or released prior to April 6, 1991, except for those members eligible for coverage under § 9.1(a)(3) of this part.

(Authority: 38 U.S.C. 1967)

§ 9.24 [Amended]

5. In § 9.24, paragraphs (a) (1) and (2) are amended by removing the date "January 1, 1986" from both paragraphs, and adding in its place the date "April 6, 1991." in both paragraphs.

[FR Doc. 92-7901 Filed 4-7-92; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AF32

Implementation of the Persian Gulf War Veterans' Benefits Act of 1991 and the Montgomery GI Bill; Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Interim final regulations with request for public comment.

SUMMARY: The Persian Gulf War Veterans' Benefits Act of 1991 provides

increases in the full-time rate of basic educational assistance payable to someone pursuing a program of education under the Montgomery GI Bill—Active Duty, effective October 1, 1991. These interim regulations implement that increase. VA also is authorized by law to set by regulation the amount of monthly educational assistance payable to someone who is pursuing a program of education at other than the full-time rate under the Montgomery GI Bill—Active Duty. Since full-time rates are increased, VA is making proportional increases to other than full-time rates. The portion of this notice setting these rates effective October 1, 1991 constitutes interim final regulations to inform the public of the rates of educational assistance payable for this training. Public comment is invited concerning these other than full-time rates.

DATES: Comments must be received on or before May 8, 1992. Comments will be available for public inspection until May 18, 1992. These regulations are effective October 1, 1991.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until May 18, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: Section 337 of the Persian Gulf War Veterans' Benefits Act 1991 (Pub. L. 102-25) provides an increase in educational assistance payable under the Montgomery GI Bill—Active Duty to someone who is pursuing a full-time program of education. This increase is effective on October 1, 1991, and will last for two years. At the end of that two-year period the Secretary of Veterans Affairs may either revert to payment at the rates in effect before October 1, 1991; continue paying the new rates; or provide a percentage increase in educational assistance equal to the percentage increase in the Consumer Price Index during the 12-month period preceding June 30, 1993.

The law (38 U.S.C. 1415(a)(2)) requires the Department of Veterans Affairs (VA) to set the rate of payment of educational assistance to people

pursuing programs of education at a rate other than full time. Since statutory full-time rate increases are effective October 1, 1991, we are making corresponding proportional increases in the other than full-time rates effective the same date. Interim final regulations provide those new other than full-time rates of payment.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by Executive Order 12291, entitled Federal Regulation. Although the increase in benefits may cost more than \$100 million, the increase is caused by the underlying law which the regulations implement. The regulations themselves will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs certifies that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA finds that good cause exists for publishing these regulations as interim final regulations with a request for public comment rather than publishing them as proposed regulations. The law requires that the new rates for full-time training go into effect on October 1, 1991. It would be contrary to the public interest to delay implementation of corresponding less than full-time rate increases until after October 1, 1991 in order to provide for prior public notice and comment.

The Catalog of Federal Domestic Assistance number for this program is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping

requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 5, 1992.

Edward J. Derwinski,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart K is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

1. The authority citation for part 21, subpart K continues to read as follows:

(Authority: 38 U.S.C. chapter 30, Pub. L. 98-525; 38 U.S.C. 501(c))

2. In § 21.7136, paragraph (a) and its authority citation are revised; and paragraphs (b)(1) and (b)(2) and their authority citations are revised; and the introductory text to paragraph (b)(3) is revised to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

(a) *Rates.* (1) Except as otherwise provided in this section and § 21.7137 of this part, the monthly rate of basic educational assistance payable to a veteran is the rate stated in this table.

| Training | Monthly rate |
|-----------------------------------|--------------------------|
| Full time..... | \$350.00. |
| ¾ time..... | 262.50. |
| ½ time..... | 175.00. |
| Less than ½ but more than ¼ time. | 175.00 See § 21.7136(d). |
| ¼ time or less..... | 87.50 See § 21.7136(d). |

(Authority: 38 U.S.C. 3015(c), 3015(f); Pub. L. 98-525, Pub. L. 102-25, Oct. 1, 1991)

(2) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran who is pursuing an apprenticeship or other on-job training is the rate stated in this table.

| Training period | Monthly rate |
|----------------------------------------------|--------------|
| First six months of pursuit of program..... | \$262.50 |
| Second six months of pursuit of program..... | 192.50 |
| Remaining pursuit of program..... | 122.50 |

(Authority: 38 U.S.C. 3015, 3032(c); Pub. L. 99-576, Pub. L. 102-25, Oct. 1, 1991)

(3) Except as otherwise provided in this section the monthly rate of basic educational assistance payable to a

veteran who is pursuing a cooperative course is \$280.

(Authority: 38 U.S.C. 3015(f), 3032(d); Pub. L. 100-689, Pub. L. 102-25, Oct. 1, 1991)

(b) *Rates for veterans whose initial obligated period of active duty is less than three years.* (1) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran whose initial obligated period of active duty is less than three years and who has not served and is not committed to serve in the Selected Reserve for a period of four years is the amount stated in this table.

| Training period | Monthly rate |
|-----------------------------------|------------------------------------|
| Full time..... | \$275.00. |
| ¾ time..... | 206.25. |
| ½ time..... | 137.50. |
| Less than ½ but more than ¼ time. | 137.50 See paragraph § 21.7136(d). |
| ¼ time or less..... | 68.75 See paragraph § 21.7136(d). |

(Authority: 38 U.S.C. 3015(c); Pub. L. 98-525, Pub. L. 102-25, Oct. 1, 1991)

(2) Except as otherwise provided in this section, the monthly rate of educational assistance payable to a veteran whose initial obligated period of active duty is less than three years and who has not served and is not committed to serve in the Selected Reserve for a period of four years, and who is pursuing an apprenticeship or other on-job training is the rate stated in this table.

| Training period | Monthly rate |
|----------------------------------------------|--------------|
| First six months of pursuit of program..... | \$206.50 |
| Second six months of pursuit of program..... | 151.25 |
| Remaining pursuit of program..... | 96.25 |

(Authority: 38 U.S.C. 3032(c); Pub. L. 102-25)

(3) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable is \$220 when—

* * * * *

(Authority 38 U.S.C. 3032(d); Pub. L. 102-25)

3. In § 21.7137, paragraphs (a) and (c)(2) and their authority citations are revised to read as follows.

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.

(a) *Minimum rates.* (1) Except as provided in this section, the monthly rate of basic educational assistance will be the rate taken from the following table.

| Training | Monthly rate | | | |
|----------------------------------|---------------|---------------|----------------|------------------------------------------|
| | No dependents | One dependent | Two dependents | Additional for each additional dependent |
| Full time | \$538.00 | \$574.00 | \$605.00 | \$16.00 |
| ¾ time | 404.00 | 430.50 | 454.00 | 12.00 |
| ½ time | 269.00 | 287.00 | 302.50 | 8.50 |
| Less than ½ but more than ¼ time | 1 269.00 | | | |
| ¼ time or less | 1 134.50 | | | |
| Cooperative | 401.60 | 422.00 | 441.60 | 9.20 |

¹ See paragraph § 21.7137(b).

(Authority: 38 U.S.C. 1415(c), 1415(f); Pub. L. 98-525, Pub. L. 100-689, Pub. L. 102-25, Oct. 1, 1991)

(2) For veterans pursuing an apprenticeship or other on-job training, the monthly rate of basic educational

assistance will be the rate taken from the following table.

| Training period | Monthly rate | | | |
|------------------------------------|---------------|---------------|----------------|------------------------------------------|
| | No dependents | One dependent | Two dependents | Additional for each additional dependent |
| 1st 6 months of pursuit of program | \$365.25 | \$377.63 | \$388.50 | \$5.25 |
| 2nd 6 months of pursuit of program | 248.88 | 258.23 | 265.93 | 3.85 |
| 3rd 6 months of pursuit of program | 146.30 | 152.43 | 157.15 | 2.45 |
| Remaining pursuit of program | 134.40 | 140.18 | 145.43 | 2.45 |

(Authority: 38 U.S.C. 1415(d), 1415(f); Pub. L. 99-576, Pub. L. 102-25, Oct. 1, 1991)

[c] * * *

(2) The following monthly rates—

(i) \$538.00 for full-time training,

(ii) \$404.00 for three-quarter-time training,

(iii) \$269.00 for one-half-time training and training that is less than one-half, but more than one-quarter-time training, and

(iv) \$134.50 for one-quarter-time training.

(Authority: 38 U.S.C. 1415(d), 1415(f); Pub. L. 98-525, Pub. L. 102-25, Oct. 1, 1991)

[FR Doc. 92-7896 Filed 4-7-92; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 26)]

Rail Carriers; Exemption of Industrial Development Activities From Anti-Rebating Provisions of the Interstate Commerce Act

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule pursuant to 49 U.S.C. 10505, exempting as a class certain market

development activities from the anti-rebating provisions of the Interstate Commerce Act, 49 U.S.C. 10761(a), 10762(a)(1), 11902, 11903, and 11904(a), originally enacted as the Elkins Act. This will allow railroads to engage in these pre-movement, non-transportation development activities without fear of prosecution for Elkins Act violations. A notice of proposed rulemaking in this proceeding was published on July 15, 1991 at 56 FR 32159. The exemption meets the criteria of 49 U.S.C. 10505 and will facilitate efforts to attract business, such as helping to develop industrial parks where rail service will be available and constructing plant track for the exclusive use by a shipper. We will establish this exemption via an addition to 49 CFR 1039, which is set forth below. Some commenters have indicated that special consideration may apply for market development activities involving agricultural shippers. The Commission currently sees no need to revoke the exemption, delay its effectiveness, or provide special relief for agricultural shippers. However, we are commencing a separate proceeding, Ex Parte No. 346 (Sub-No. 26B), to investigate whether the exemption should remain or be modified or revoked for activities related to movements of non-exempt agricultural commodities.

EFFECTIVE DATE: This final rule is effective May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660 (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

As explained in our fill decision, we reaffirm our preliminary conclusion that we have authority to issue exemptions from the Elkins Act and that this class exemption meets the criteria of section 10505. The exemption will make it easier for rail carriers, both large and small, to attract new and vital business through market development activities, by eliminating the fear of Elkins Act prosecution. Moreover, regardless of which shippers will directly receive development incentives, all rail shippers will benefit at least indirectly since an increase in transportation options would intensify competition and thereby potentially reduce transportation rates.

We also reaffirm our preliminary conclusions that this action will not significantly affect either the quality of the human environment or the conservation of energy resources and that the proposed exemption will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: March 24, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips and Emmett. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, 11105, 11902, 11903, and 11904; and 5 U.S.C. 553.

2. A new § 1039.22 is added to read as follows:

§ 1039.22 Exemption of certain payments, services, and commitments from the Elkins Act and related provisions.

(a) Whenever a rail carrier:

(1) Provides payments or services for industrial development activities; or,
(2) makes commitments regarding future transportation;
and reasonably determines that such payments, services or commitments would not be eligible for inclusion in rail contracts under 49 U.S.C. 10713, such transaction(s) shall be exempt from 49 U.S.C. 10761(a), 10762(a)(1), 11902, 11903, and 11904(a), subject to the conditions set forth in paragraphs (b) through (e) of this section.

(b) If any interested person(s) believes a transaction is eligible for inclusion in one or more contracts under 49 U.S.C. 10713, that person's exclusive remedy shall be to request the Commission to so determine, and if the Commission does so, the transaction shall no longer be exempted by this section commencing 60 days after the date of the Commission's determination.

(c) Transactions that are exempt under paragraph (a) of this section shall be subject to all other applicable provisions of Title 49 U.S.C. Subtitle IV and to the antitrust laws to the extent that the activity does not fall within the Commission's exclusive jurisdiction.

(d) For any actual movement of traffic, a carrier must file any required tariff or section 10713 contract, and conform to all other applicable provisions of the Interstate Commerce Act, but this

paragraph shall not be interpreted to limit, revoke, or remove the effect of the exemption granted under paragraph (a) of this section with respect to any payments, services, or commitments made prior to the filing of the rate or contract.

(e) When any person files with the Commission a petition to revoke the exemption granted by this section as to any specific transaction, the rail carrier shall have the burden of showing that, with respect to such transaction, all requirements of paragraph (a) of this section were met, and the carrier reasonably expected, before undertaking such payments, services or commitments, that such payments, services or commitments would result, within a reasonable time, in a contribution to the carrier's going concern value.

(f) This exemption shall remain in effect unless modified or revoked by a subsequent order of this Commission.

[FR Doc. 92-8057 Filed 4-7-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 285**

[Docket No. 910102-1312]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by longline vessels permitted in the Incidental Catch category in the Regulatory Area south of 36°00' N latitude. This closure is effective 0001 hours, on April 10, 1992, through December 31, 1992. Closure of this segment of the fishery is necessary because NOAA has determined that the annual quota for this category has been attained.

EFFECTIVE DATE: The closure is effective from 0001 hours local time on April 10, 1992, through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating the harvest of Atlantic bluefin

tuna by persons and vessels subject to U.S. jurisdiction were published in the Federal Register on October 25, 1985 (50 FR 43398). Section 285.22(f) of the regulations provides for an annual quota of 132 metric tons (mt) of giant Atlantic bluefin tuna to be harvested from the Regulatory Area by vessels permitted in the Incidental Longline category. Of this amount, no more than 104 mt may be landed south of 36°00' N latitude.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) is required under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further required under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of vessel subject to the quota when the catch equals the quota.

Based on landing reports, the Assistant Administrator has determined that the quota of Atlantic bluefin tuna allocated for the Incidental Longline category in the Regulatory Area south of 36°00' N latitude will be attained by the effective date of this notice. Retention of giant Atlantic bluefin tuna by longline vessels in the portion of the Regulatory Area south of 36°00' N latitude must cease at 0001 hours, April 10, 1992. Vessels permitted in the Incidental Longline category landing their catch north of 36°00' N latitude may continue to retain Atlantic bluefin tuna caught incidentally until the 132 mt quota is reached.

Other Matters

Notice of this action will be mailed to Atlantic bluefin tuna dealers and fishermen, several industry publications, associations and state agencies. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 971 *et seq.*

Dated: April 1, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-7993 Filed 4-2-92; 4:22 pm]

BILLING CODE 3510-22-M

50 CFR 641

[Docket No. 911221-2060]

RIN 0648-AE25

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this final rule to implement Amendment 4 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule: (1) Adds albacore jack and banded rudderfish to the management unit; (2) specifies that scamp are counted against the shallow-water grouper quota until that quota is reached, after which scamp are counted against the deep-water grouper quota; (3) establishes a 3-year moratorium on additional commercial permits in the fishery, with allowances for permit transfers and sales of permitted vessels, while a more comprehensive limited access system is developed; (4) commencing with commercial permits for 1993, allows the earned income requirement to be met in either of the 2 years preceding the permit application; (5) revises the definitions of "charter vessel" and "headboat"; (6) clarifies what constitutes having trawl gear or a longline on board a fishing vessel; and (7) makes minor changes for consistency and clarity. In addition, Amendment 4 modifies the timing and requirements of the framework procedure for implementing or changing certain management measures. The intended effects of Amendment 4 and this rule are to protect the reef fish stocks, some species of which are overfished, to ensure the continued economic viability of the reef fish fishery, to provide the Gulf of Mexico Fishery Management Council (Council) with necessary flexibility in the rebuilding program for reef fish, and to conform the regulations with current usage.

EFFECTIVE DATES: May 8, 1992, except that § 646.4(l) is effective May 8, 1992, through May 7, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP, prepared by the Council, and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*

The backgrounds and rationales for the measures in this final rule, and for

the modification of the timing and requirements of the framework procedure for implementing or changing certain management measures, are set forth in the preamble to the proposed rule (56 FR 67571, December 31, 1991) and in Amendment 4 to the FMP, the availability of which was announced (56 FR 59922, November 26, 1991), and are not repeated here.

Comments and Responses

A minority report signed by one Council member objected to the moratorium on acceptance of new applications for commercial permits and to the development of an effort limitation program by the Council. Two commenters covered various topics including the new NMFS stock assessment receipt date, the moratorium, and the limited entry concept.

Comment: One commenter objected to modifying the scheduled receipt date of NMFS's stock assessment to August rather than April of each year, as currently required. The commenter believes that the change would not allow sufficient time for review by the stock assessment panel, advisory panel, or public prior to final Council action. The commenter also stated that: (1) Council agendas are provided to the public too late for review and comment at the meetings; and (2) NMFS data collection efforts are insufficient to monitor the reef fish commercial quotas.

Response: The previous year's stock information usually is not available during April, the month currently specified for receipt of NMFS stock assessments by the Council. Consequently, data approximately 2 years old must be relied upon for assessments prepared before April of each year. In contrast, data for an additional year routinely are available for assessment in August. Accordingly, Amendment 4 offers a stock assessment schedule that optimizes use of the most recent data base and allows current assessment of the resource.

The framework procedure still allows flexibility in setting receipt dates of the stock assessment with the concurrence of the Council and the Regional Director, Southeast Region, NMFS. Therefore, the schedule can be changed when circumstances require a receipt date earlier than August.

Changing the receipt date of the stock assessment to August allows adequate time for review and comment before final Council action. The Council receives public comment at its meetings before taking final action on any proposal, and may elect to hold additional hearings Gulf-wide, as

appropriate. Management adjustments are then recommended by the Council and submitted for review. NMFS also solicits public comments before it takes final action.

Comments regarding Council agendas and quota monitoring by NMFS are not within the scope of Amendment 4 and its implementing regulations.

Comment: One Council member filed a minority report objecting to the moratorium and recommending the status quo (no moratorium or limited access program). The report contends that additional time is needed to evaluate fully the already restrictive management measures currently in effect, and that license limitations restrict the ability of fishermen to shift effort among fisheries as necessary for economic survival.

Response: The objections set forth in the minority report are not supported by available information on the reef fish resource and related industries. Even with the 50 percent earned income requirement for an applicant to obtain a reef fish commercial permit, the fishing capacity within the fishery can be characterized as excessive compared to the available level of resource. Accordingly, the reef fish fishery needs some additional limit on participation. The 3-year moratorium provides an initial limitation on entry during the time needed to collect necessary data to design and present at public hearings a comprehensive limited access program. After public hearings and if approved by the Council, the program would be submitted to NMFS as an FMP amendment. NMFS would solicit public comments on the amendment before initiating final action.

A commercial fisherman who has met the earned income requirement and who applies for a vessel permit for reef fish before the effective date of the moratorium, may obtain such permit for 1992. Under the requirement an applicant must have derived more than 50 percent of his or her earned income from commercial, charter, or headboat fishing in the calendar year preceding the application. There is no requirement that the qualifying income must have been earned in the reef fish fishery. Accordingly, a fisherman has flexibility in choosing the fisheries in which he participates, if he meets and continues to meet the earned income requirement.

During the moratorium, a fisherman not initially qualifying for a reef fish permit could obtain a permit only by purchasing a permitted reef fish vessel. Such additional entry into the fishery during the moratorium would not increase the number of participating

vessels. Therefore, NOAA disagrees with the minority report and has approved the moratorium as proposed under Amendment 4.

Comment: A participant in the fishery objected to starting the permit moratorium on the effective date of the implementing regulations. A control date of November 1, 1989, as published in the *Federal Register*, was cited by the commenter, who recommended an emergency rule to start the permit moratorium retroactive to that date.

Response: At the Council's request, a control date was published to provide notice that anyone entering the reef fish fishery after November 1, 1989, may not be assured of future access under a program limiting the number of participants. However, establishment of a control date does not commit the Council or NMFS to any particular management regime, or effective date for a permit moratorium.

The Council, after deliberation on other effective dates for the moratorium, decided that entry into the reef fish fishery should be capped at the level of participation when Amendment 4 is implemented. Accordingly, the Council chose to begin the moratorium on the effective date of the implementing regulations, recognizing further delay would encourage increased numbers of permit applications for speculative purposes. The November 1, 1989, control date may be utilized for implementing the comprehensive limited access program to be developed by the Council.

Comment: One commenter contends that NMFS has approved a limited entry system whereby participants will be issued shares of the commercial quota based on their percentage of historic harvest. The commenter recommended instead a limited access system of trip limits and equal shares for all fishing vessels.

Response: A limited entry system based on individual shares has not been submitted by the Council, and none has been approved by NMFS. During the 3-year moratorium, the commercial quota is not being allocated to participants in shares. Comments on the operational aspects of any additional measures under any long-term limited access program would be considered under a separate amendment, and therefore are outside the scope of Amendment 4 and this rule.

Comment: A commenter objected to the possession limits instituted under Amendment 1, whereby charter vessels and headboats on multi-day trips are allowed up to twice the daily bag limit under certain conditions. The commenter also objected to issuance of reef fish commercial permits based on

documentation of income earned in the charter vessel and head boat industries.

Response: These comments deal with management measures that were made available for public review when previous FMP amendments were adopted, and therefore are outside the scope of the final rule implementing Amendment 4.

Approval of Amendment 4

On February 21, 1992, the Secretary of Commerce approved Amendment 4. In addition to the changes contained in this final rule, Amendment 4 also modifies the timing and requirements of the framework procedure for implementing or changing certain management measures.

Classification

The Secretary of Commerce determined that Amendment 4 is necessary for the conservation and management of the reef fish fishery and that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under Executive Order 12291.

The Council prepared a regulatory impact review (RIR) as part of Amendment 4, which concludes that this final rule will have net positive benefits. A summary of the regulatory impacts of individual management measures was included in the discussion of each measure in the proposed rule, with additional analysis and discussion in the RIR, and is not repeated here.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management

program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida, Louisiana, and Mississippi agreed with the determination. Alabama did not respond during the statutory time period; therefore, state agency agreement with the consistency determination is presumed.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 2, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.2, the definitions for "Charter vessel" and "Headboat" are revised, and in the definition for "Reef fish", in paragraph (a) under "Jacks—Carangidae Family", two new species are added after "Lesser amberjack" to read as follows:

§ 641.2 Definitions.

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a permit issued under § 641.4 is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat with a permit issued under § 641.4 is considered to be operating as a headboat when it carries a passenger who pays a fee or when

there are more than three persons aboard, including operator and crew.

Reef fish * * *

(a) * * *
Jacks—Carangidae Family

Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*

3. In § 641.4, paragraphs (a)(2) and (b)(2)(xi) and the first sentence of paragraph (g) are revised, and a new paragraph (l) is added to read as follows:

§ 641.4 Permits and fees.

(a) * * *
(2) A qualifying owner or operator of a charter vessel or headboat may obtain a permit. However, a charter vessel or headboat must adhere to the bag limits when operating as a charter vessel or headboat.

(b) * * *
(2) * * *

(xi) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing during the calendar year preceding the application, except that, for renewal of permits for 1993 and ensuing years, the earned income requirement may be met in either of the two calendar years preceding the application;

(g) *Transfer.* Except as provided for under paragraph (l) of this section, a permit issued under this section is not transferable or assignable. * * *

(l) *Moratorium on permits.* The provisions of this paragraph (l) are effective through May 7, 1995.

(1) An application for a vessel permit that is postmarked or hand-delivered after May 7, 1992, will not be accepted, except for an application for renewal of an existing vessel permit or as provided in paragraphs (l)(2) and (l)(3) of this section.

(2) An owner of a permitted vessel may transfer the vessel permit to another vessel owned by him or her by returning the existing permit with an application for a vessel permit for the replacement vessel.

(3) A person purchasing a vessel with a permit issued under this section may obtain a permit for that vessel, and renew the permit for that vessel for the first calendar year after the purchase, without meeting the earned income requirement of paragraph (b)(2)(xi) of this section, provided that the seller met

the earned income requirement. However, to renew the vessel permit for the second calendar year after the purchase, the new owner must meet that earned income requirement not later than the first calendar year after the purchase takes place.

(4) A permit that is not renewed or is revoked will not be reissued.

4. In § 641.24, paragraph (a)(2)(iv) is revised and new paragraphs (a)(4) and (a)(5) are added to read as follows:

§ 641.24 Bag and possession limits.

(a) * * *
(2) * * *

(iv) That is operating as a charter vessel or headboat; or

(4) For the purpose of paragraph (a)(2)(ii) of this section, a vessel is considered to have trawl gear on board when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(5) For the purpose of paragraph (a)(2)(iii) of this section, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

5. In § 641.25, paragraphs (b) and (c) are revised to read as follows:

§ 641.25 Commercial quotas.

(b) Deep-water groupers, i.e., yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, and, after the commercial quota for shallow-water grouper is reached, scamp, combined—1.8 million pounds.

(c) Shallow-water groupers, i.e., all groupers other than deep-water groupers and jewfish, including scamp before the commercial quota for shallow-water groupers is reached, combined—9.2 million pounds.

§ 641.29 [Redesignated from § 3641.28]

6. Section 641.28 is redesignated as § 641.29 and a new § 641.28 is added to read as follows:

§ 641.28 Adjustment of Management Measures.

In accordance with the procedures and limitations of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, the Regional Director may establish or

modify for species or species groups in the reef fish fishery the following: Target dates for rebuilding overfished species, total allowable catch, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas.

[FR Doc. 92-8062 Filed 4-3-92; 1:16 pm]

BILLING CODE 3510-22-M

50 CFR Part 641

[Docket No. 920385-2085]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce (Secretary) promulgates an emergency rule that temporarily amends the regulations governing the reef fish fishery of the Gulf of Mexico to allow continued, limited commercial fishing for red snapper. Specifically, through May 14, 1992, commercial fishermen may harvest and sell red snapper from the EEZ in amounts not exceeding 1,000 pounds (453.6 kilograms) per trip. The intended effect of this action is to respond to economic and social emergencies in the reef fish fishery and to prevent waste of the valuable red snapper resource.

EFFECTIVE DATES: April 3, 1992, through May 14, 1992.

ADDRESSES: Copies of documents supporting this action may be obtained from the Regional Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3161.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) was developed by the Gulf of Mexico Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), and is implemented by regulations at 50 CFR part 641.

A comprehensive stock assessment, completed in 1990 and updated in 1991, indicated that the red snapper resource is overfished. In response, the Council implemented a rebuilding program under which it reduced the annual commercial quota for red snapper from 3.1 million pounds for 1990 to 2.04 million pounds for 1991, continuing for 1992.

Preliminary red snapper landings data indicated that the 1992 commercial quota was met just 53 days into the season. Under 50 CFR 641.26, NMFS is

required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached. Accordingly, the commercial fishery for red snapper in the EEZ was closed February 22, 1992 [57 FR 6561, February 26, 1992].

The economic and social effects of the early closure of the red snapper fishery and associated industries were fully discussed at the March 9-12, 1992, meeting of the Council. Public testimony at that meeting indicated that: (1) Significant incidental catch and discard of red snapper was associated with fishing for alternative species; (2) fishing for alternative species during the closure was unprofitable without income from the higher value red snapper due to low catch rates in many areas and low value of the alternative species; and (3) in the present recession, few employment opportunities are available for fishermen who can no longer make a profit without income from red snapper. The Council determined that the severe economic status of the fishery constitutes an emergency that justifies a limited additional commercial harvest of red snapper.

Red snapper landings in 1991 and 1992 were roughly the same; however, ex-vessel values were considerably reduced in 1992. Presumably the excessive availability of fish in early 1992 depressed ex-vessel prices. Landings in 1991 were valued at about \$5.5 million compared to between \$3.9 and \$4.4 million in 1992. This represents a decrease in revenue to the fishermen of between 20 and 29 percent. The impact on individual fishermen, however, varied significantly. Some fishermen reported receiving less than \$1.50 per pound while others reported receiving as much as \$2.75 per pound for at least part of their catch. Prices varied by day and those in the western Gulf were generally lower than those in the eastern Gulf.

Besides the economic impact of depressed ex-vessel values, some of the traditional red snapper fishermen may have suffered even greater economic losses due to a reported influx of nontraditional fishermen. The permitted vessel capacity in 1991 was more than sufficient to have taken the entire 1992 quota in one or two days, given the unusually high catch rates. These reported high catch rates undoubtedly attracted many vessels to direct their fishing efforts to red snapper. An analysis of vessel logbooks by Council staff showed that 60 percent of the vessels reporting red snapper landings in 1991 had total annual landings of less

than 1,000 pounds per vessel. This suggests that in 1991 a large number of vessels were not conducting a directed fishery for red snapper, but instead were targeting other species. Had the vessels reporting these relatively small landings redirected their efforts to red snapper, they could have accounted for a significant portion of the 1992 landings. Unsubstantiated reports from several dealers indicated that landings by nontraditional fishermen could have accounted for as much as 30 percent of the quota.

Due to the economic and social impacts of the early red snapper closure, the Council requested an emergency rule that would allow commercial harvest and sale of red snapper from the EEZ in an amount not exceeding 1,000 pounds (453.6 kilograms) per trip. In the Council's judgment, the 1,000-pound trip limit:

(1) Is below the level that will support an economically viable directed fishery for red snapper, thereby discouraging significant increases in the directed harvest;

(2) Will allow fishermen to target other, less valuable, reef fish and land a bycatch of higher value red snapper, which will permit most trips to be profitable;

(3) Will alleviate some of the economic impact of the closure;

(4) Should not result in depressing the ex-vessel and market values of red snapper, as occurred during the brief opening earlier this year; and

(5) Will allow retention of red snapper, caught in fishing for other species, that would otherwise be subject to release mortality, and, thus, will reduce waste of the valuable red snapper resource.

The Council rejected the "no action" alternative because a complete closure of the red snapper fishery would continue the excessive economic burdens on the red snapper industry. The Council also considered and rejected several options for emergency action that would allow a continued, full-scale directed fishery, including split seasons and reopening of the fishery without harvest limits. Since these alternatives would significantly increase red snapper fishing mortality, the Council recommended the 1,000-pound vessel trip limit.

The Council requested that this emergency rule expire no later than May 14, 1992, when the Council will:

(1) Review a report from its Stock Assessment Panel, and other information available on the limited additional catch of red snapper, to

determine the need for further immediate action; and

(2) Recommend appropriate long-term changes to alleviate the economic problems in the red snapper industry.

To ensure that this action does not precipitate harvests of red snapper that will jeopardize the continued viability of the resource, after the report from the Council's Stock Assessment Panel and after consultation with the Council, the Regional Director, Southeast Region, NMFS (Regional Director), may terminate the provisions of this emergency rule prior to May 14, 1992, effective on filing a notice to that effect with the Office of the Federal Register.

The best available scientific information indicates that an additional catch of up to 1.39 million pounds of red snapper, as an upper limit of red snapper that could be caught under a 1,000-pound trip limit in 60 days, would not, by itself, necessitate reduction of the 1993 commercial quota to achieve the FMP's goal of a 20 percent spawning potential ratio (SPR) by the year 2007. Moreover, the action is within the FMP's three-year "grace period" during which allowable catch levels may exceed those needed to achieve biological recovery, if necessary to reduce negative impacts on industry, provided that future management measures ensure that the SPR goal is met by 2007.

Two Council members who had voted against this action submitted letters of objection to the Council's request, contending that:

(1) Emergency conditions do not exist in the fishery;

(2) Overfishing could occur under the emergency reopening;

(3) The trip limit is unenforceable; and

(4) The rationale presented by proponents of the emergency rule is not based on the best available scientific information.

The NMFS Regional Director also voted against this action because, at that time, there was no information available on the potential magnitude of the harvest that could be taken under the proposed trip limit, or of the resulting impact of that harvest of the spawning stock. His major concern was that the proposed action would be inconsistent with the stock rebuilding program, thus causing long-term damage to the resource and, thus, major long-term negative economic impacts on the fishing industry. His concerns have since been resolved by the NMFS scientific analysis of the proposed trip limits. To enhance enforceability of the trip limits, NMFS is requesting each Gulf of Mexico state to enact compatible regulations applicable to its waters.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act for preparation of a regulatory flexibility analysis because no general notice of proposed rulemaking for this rule is required by law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), prepared an environmental assessment (EA) for this action which concludes that there will be no significant impact on the human environment. A copy of the EA is available from the address above.

The Assistant Administrator determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Secretary finds for good cause (i.e., to respond to an emergency and to prevent waste of a valuable fishery resource) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule, or to delay for 30 days its effective date, under the provisions of section 553(b)(B) and (d)(3) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 3, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Effective from April 3, 1992, through May 14, 1992, the following new § 641.29 is added to subpart B to read as follows:

§ 641.29 Temporary trip limit for red snapper.

(a) From April 3, 1992, through May 14, 1992, the provisions of §§ 641.24(a)(3) and 641.26 notwithstanding.

(1) A person who fishes under a permit issued pursuant to § 641.4, provided such person is not subject to the bag limits as specified under § 641.24(a)(1) and (2), may harvest and possess red snapper in or from the EEZ and barter, trade, and sell red snapper from the EEZ in an amount not exceeding 1,000 pounds (453.6 kilograms) per trip; and

(2) A dealer may purchase, barter, and trade red snapper taken from the EEZ from such person in an amount not exceeding 1,000 pounds (453.6 kilograms) per trip.

(b) From April 3, 1992, through May 14, 1992, no person may transfer at sea a red snapper—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such red snapper was taken.

(c) If the Regional Director finds for good cause, based on a report from the Stock Assessment Panel of the Gulf of Mexico Fishery Management Council (Council) and on consultation with the Council, that the provisions of this section should be terminated prior to May 14, 1992, the Regional Director may terminate its provisions by removing this section, effective upon filing a notice to that effect with the Office of the Federal Register.

[FR Doc. 92-8110 Filed 4-3-92; 2:28 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS is establishing a directed fishing allowance and is prohibiting directed fishing for Pacific cod in the Eastern Regulatory Area (statistical areas 64 and 65) of the Gulf of Alaska (GOA). This action is necessary to prevent the total allowable catch (TAC) for Pacific cod in the Eastern Regulatory Area from being exceeded. The intent of this action is to promote optimum use of groundfish while conserving Pacific cod stocks.

EFFECTIVE DATES: 12 noon Alaska local time (A.l.t.), April 4, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT:

Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by the Secretary of Commerce under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery is TAC, as stated in § 672.20(a)(2). Under the final notice of specifications (57 FR 2844, January 24, 1992), the TAC specification for Pacific cod in the Eastern Regulatory Area is 1,000 metric tons (mt).

Under § 672.20(c)(2), the Director, Alaska Region, NMFS (Regional Director), has determined that the Pacific cod TAC in the Eastern Regulatory Area will be reached before the end of the fishing year if directed fishing for Pacific cod continues. Therefore, NMFS is establishing a directed fishing allowance for Pacific cod in the amount of 265 mt, and is setting aside the remaining 735 mt of the TAC as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishery will take its allowance by April 4, 1992. Consequently, under § 672.20(c)(2), NMFS is prohibiting directed fishing for

Pacific cod in the Eastern Regulatory Area, effective from 12 noon, A.L.T., April 4, 1992, through 12 midnight, A.L.T., December 31, 1992.

After this closure, in accordance with § 672.20(g)(3), amounts of Pacific cod retained on board a vessel in the Eastern Regulatory Area of the GOA must be less than 20 percent of the amount of all other fish species retained at the same time by the vessel during

the same trip as measured in round weight equivalents.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16, U.S.C. 1801 *et seq.*

Dated: April 2, 1992.

David S. Crestin,

*Acting Director, Office of Fisheries
Conservation and Management, National
Marine Fisheries Service.*

[FR Doc. 92-8064 Filed 4-3-92; 12:32 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 57, No. 68

Wednesday, April 8, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AE85

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is issuing a proposed rule to change the lead agency for the New Orleans, Louisiana, wage area from the Department of Veterans Affairs (DVA) to the Department of Defense (DoD) and to change the survey beginning month from February to November. These proposed changes recognize the fact that DoD is the major employer of Federal Wage System (FWS) employees in the New Orleans area and would allow DoD to conduct the survey at a better and more convenient time.

DATES: Comments must be received on or before May 8, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606-2848 or (FTS) 266-2848.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs is the lead agency for the New Orleans, Louisiana, wage area. The DVA Medical Center in New Orleans is the host activity for the survey. DVA has requested that DoD assume responsibility for the New Orleans survey because DoD is the largest FWS employer in the area and because DoD now has several large facilities in the survey area that can act as a host activity because of the addition of Plaquemines Parish to the survey area in 1985. DoD has agreed to assume

responsibility for the survey. OPM also proposes that the beginning date of the wage survey be moved from February to November. This change would move the survey out of the Mardi Gras season, which has been a source of survey problems for many years, and would also accommodate DoD's need to balance the distribution of its wage surveys. The Federal Prevailing Rate Advisory Committee has reviewed the recommendation and concurs in the proposed changes.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is proposing to amend part 532 of title 5 of the Code of Federal Regulations as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Public Law 92-502.

Appendix A to Subpart A—[Amended]

2. Appendix A to subpart B is amended for New Orleans, Louisiana, by revising the lead agency listing from "VA" to "DoD" and the beginning month of survey from "February" to "November."

[FR Doc. 92-8002 Filed 4-7-92; 8:45 am]

BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket Nos. PRM-20-17 and PRM-20-18]

The Rockefeller University; Withdrawal of Petitions for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petitions for rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioners' request, two related petitions (PRM-20-17 and PRM-20-18) (53 FR 41342, October 21, 1988, and 53 FR 43896, October 31, 1988) filed by Dr. Edward L. Gershey, Ph.D. on behalf of the Rockefeller University, New York, New York. In PRM-20-17, the petitioner requested that the Commission amend its regulations under which a licensee may dispose of animal tissue containing small amounts of radioactivity by expanding the list of radioactive isotopes for which unregulated disposal is permitted and make the unregulated disposal of these waters a matter with which all jurisdictions must comply. In PRM-20-18, the petitioner also requested that the Commission amend its regulations to permit a licensee to dispose of solid biomedical waste containing small amounts of radioactivity by on-site incineration.

ADDRESSES: A copy of the petitioner's letter, dated February 28, 1992, requesting the withdrawal of the petitions is available for public inspection, or copying for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Single copies of the petitioner's letter may be obtained free of charge by writing to the Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Telephone: 301-492-7758 or Toll Free: 800-368-5842.

Dated at Rockville, Maryland, this 2d day of April 1992.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-8052 Filed 4-7-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-92-3]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 8, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 26509, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Angela M. Washington, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-5571.

(This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).)

Issued in Washington, DC, on April 1, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Rulemaking

Docket No.: 26509.

Petitioner: Mr. Richard Bartel.

Regulations Affected: 14 CFR 91.159.

Description of Petition: The petitioner proposes to amend the Federal Aviation Regulations to add altitude guidance to flight altitudes below 3000 feet ALG when operating in controlled airspace.

Petitioner's Reason for the Request: The petitioner believes that the proposed change would enhance safety because it allows for the high levels of activity below 3000 feet ALG and, in particular, below 18,000 MSL. The petitioner estimates that this amendment would reduce midair collisions below 3000 ALG by a minimum of 15 to 25 percent.

[FR Doc. 92-8015 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-04-AD]

Airworthiness Directives; Beech Model 400 and Mitsubishi Models MU-300 and MU-300-10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech Model 400 and Mitsubishi Models MU-300 and MU-300-10 airplanes. This proposal would require replacement of all engine mount nuts and bolts with parts that have been inspected using required magnetic particle techniques. This proposal is prompted by a recent report that some engine mount nuts and bolts installed on these airplanes may not have been subjected to the required magnetic particle inspection prior to installation. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the engine mounting system.

DATES: Comments must be received by June 1, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-04-AD, 1601 Lind Avenue SW., Renton Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT:

Mr. James M. Peterson, Aerospace Engineer, Propulsion Branch, ACE-240W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4145; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-04-AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-04-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4058.

Discussion

Beech and Mitsubishi type design requires magnetic particle inspection of engine mount nuts and bolts on Beech Model 400 and Mitsubishi Models MU-300 and MU-300-10 airplanes in order to detect flaws prior to installation on these airplanes. There has been a recent report that some engine mount nuts and bolts on certain Beech Model 400 airplanes may not have been subjected to the required magnetic particle inspection prior to installation. Undetected defects on engine mount nuts and bolts could initiate cracks.

Additionally, certain operators have installed replacement rear mount bolts and nuts on each engine of Beech Model 400 and Mitsubishi Model MU-300-10 airplanes, in accordance with Beech Service Bulletin 2169, dated April 1987. Mitsubishi Service Bulletins 71-002, dated March 10, 1987, and 71-003, dated February 25, 1987, also describe procedures for the same replacement action on Mitsubishi Model MU-300 airplanes. Consequently, nuts and bolts may contain undetected defects if obtained from Beech for use in accomplishing replacement in accordance with any of these three service bulletins. Defective engine mount nuts and bolts, if not detected and removed, could result in reduced structural integrity of the engine mounting system.

The FAA has reviewed and approved Beechcraft Service Bulletin 24808, dated June 1991 (for Beech Model 400 and Mitsubishi Model MU-300-10 airplanes), and Mitsubishi Service Bulletin 71-004, dated January 8, 1992 (for Mitsubishi Model MU-300 airplanes), that describe procedures for replacement of all engine mount nuts and bolts with parts that have been inspected using magnetic particle techniques.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of all engine mount nuts and bolts with parts that have been inspected using magnetic particle techniques. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 154 Beech Model 400 and Mitsubishi Models MU-300 and MU-300-10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 87 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Required parts would cost approximately \$211 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$32,712.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a) 1421 and 1423; 49 U.S.C. 108(g); and 14 CFR 11.89.

§ 39.13 Amended

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket 92-NM-04-AD.

Applicability: Beech Model 400 airplanes, serial numbers RJ-1 through RJ-65, inclusive; Mitsubishi Model MU-300 airplanes, serial numbers A003SA through A091SA, inclusive; and Mitsubishi Model MU-300-10 airplanes, serial numbers A1001SA through A1011SA, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the engine mounting system, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, or at the next scheduled inspection interval, whichever occurs first, replace each engine mount nut and bolt with nuts and bolts that have been inspected using magnetic particle techniques (identified by green dye), in accordance with Beechcraft Service Bulletin 2408, dated June 1991 (for Beech Model 400 and Mitsubishi Model MU-300-10 airplanes); or Mitsubishi Service Bulletin 71-004, dated January 8, 1992 (for Mitsubishi Model MU-300 airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Wichita Aircraft Certification Office (ACO), ACE-115W, FAA Small Airplane Directorate. The requests shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 31, 1992.

Darrell M. Pederson,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 92-8021 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-37-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposed the superseding of an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires repetitive inspections and repair, if necessary, of the main landing gear (MLG) wheel well pressure floor adjacent to Body Stations 880, 890, 930, and 940. This action would expand the area requiring inspection to include

Body Station 950. This proposal is prompted by several reports of fatigue-related cracking in the wheel well pressure floor. The actions specified by the proposed AD are intended to prevent loss of cabin pressurization.

DATES: Comments must be received by June 1, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-37-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707 Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stanton R. Wood, Structures and Loads Section, ANM-120S, FAA, Seattle Aircraft Certification Office, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2772; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket Number 92-NM-27-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-37-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On August 3, 1990, the FAA issued AD 90-17-06, Amendment 39-6691 (55 FR 33099, August 14, 1990), to require inspections of the main landing gear (MLG) wheel well pressure floor on Boeing Model 727 series airplanes, and repair, if necessary. The area that requires inspection includes the ends of the pressure floor beads adjacent to Body Stations (BS) 880, 890, 930, and 940. That action was prompted by several reports of cracking in the wheel well pressure floor. Eight operators had reported 34 cracks on 20 airplanes; cracking had occurred along the ends of the pressure floor reinforcing beads at BS 930 and BS 940. The cracks ranged from 0.38 to 15.25 inches in length. The airplanes on which the cracks were found had accumulated between 24,000 and 42,200 flight cycles, and between 24,000 and 49,500 flight hours. The requirements of AD 90-17-06 are intended to prevent the loss of cabin pressurization due to fatigue cracks in the wheel well pressure floor.

Since the issuance of that AD, Boeing has reported that similar cracks have been found at BS 950. These cracks have been attributed to fatigue, and are similar to the cracks previously found in the area that is currently required to be inspected in accordance with AD 90-17-06. Such cracking, if not detected and corrected in a timely manner, could result in loss of cabin pressurization.

The FAA has reviewed and approved Boeing Service Bulletin 727-53-0149, Revision 4, dated June 27, 1991, which described procedures for inspection to detect fatigue-related cracking in areas to include the beads at BS 950, in addition to BS 880, 890, 930, and 940. Incorporation of the preventative modification or permanent repair described in this service bulletin will reduce the possibility of cracks in the main wheel well pressure floor.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90-17-06 to expand the inspection area to include the beads at

BS 950, in addition to BS 880, 890, 930, and 940. Once an area has been modified or permanently repaired, that area need not be repetitively inspected. However, all areas that have not been modified or permanently repaired must be repetitively inspected, until they are modified or permanently repaired. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that there are approximately 1,574 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,007 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 114 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$6,313,890.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6691 (55 FR 33099, August 14, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92-NM-37-AD. Supersedes AD 90-17-06, amendment 39-6691.

Applicability: All Boeing Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of cabin pressurization, accomplish the following:

(a) For airplanes having line numbers 001 through 1432, perform a detailed visual, high frequency eddy current (HFEC), or dye penetrant inspection for cracks in the pressure floor, in accordance with Boeing Service Bulletin 727-53-0149, Revision 4, dated June 27, 1991, or earlier FAA-approved revisions. Accomplish the inspection prior to the compliance time specified in paragraph (a)(1) or (a)(2) of this AD, whichever occurs earlier:

(1) Prior to the accumulation of 30,000 landings, or within 2,500 landings after January 20, 1989 (the effective date of AD 88-26-02, amendment 39-6089), whichever occurs later; or

(2) Prior to the accumulation of 20,000 landings or within 2,500 landings after September 17, 1990 (the effective date of AD 90-17-06, amendment 39-6691), whichever occurs later.

(b) For airplanes defined as Group 2 in Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, and as Group I that have been modified in accordance with Boeing Service Bulletin 727-53-0149, Revision 2, dated March 20, 1981: Prior to the accumulation of 20,000 landings since manufacture or within the next 2,500 landings after September 17, 1990 (the effective date of AD 90-17-06, Amendment 39-6691), whichever occurs later, perform a detailed visual, high frequency eddy current (HFEC), or dye penetrant inspection to detect cracks in the pressure floor, in accordance with Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989; or Revision 4, dated June 27, 1991.

(c) For all airplanes listed in Boeing Service Bulletin 727-53-0149, Revision 4, dated June 27, 1991: Prior to the accumulation of 20,000 landings since manufacture, or within the next 2,500 landings after the effective date of this AD, whichever occurs later, perform a detailed visual, high frequency eddy current (HFEC), or dye penetrant inspection to detect cracks in the pressure floor adjacent to Body Station 950, in accordance with Boeing Service Bulletin 727-53-0149, Revision 4, dated June 27, 1991.

(d) Repeat the inspection required by paragraph (a), (b), or (c) of this AD, as applicable, at intervals as follows:

(1) If the previous inspection was accomplished using a visual or dye penetrant inspection technique, the next inspection must be accomplished within 4,000 landings.

(2) If the previous inspection was accomplished using an HFEC inspection technique, the next inspection must be accomplished within 5,000 landings.

(e) If cracks are detected as a result of any of the inspections required by this AD that do not exceed the limits listed in Table I in the Accomplishment Instructions of Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, or Revision 4, dated June 27, 1991, prior to further flight, repair in accordance with the interim repair described in Part II of the Accomplishment Instructions, or the permanent repair described in Part III of the Accomplishment Instructions of the service bulletin. The interim repair must be replaced within 600 landings after accomplishment with the permanent repair.

(f) If cracks are detected as a result of any of the inspections required by this AD that exceed the limits listed in Table I in the Accomplishment Instructions of Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, or Revision 4, dated June 27, 1991, prior to further flight, accomplish the permanent repair described in Part III of the Accomplishment Instructions of the service bulletin.

(g) Blind fasteners installed in accordance with Part III of Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, or Revision 4, dated June 27, 1991, are to be used as an interim repair only. The blind fasteners have a life limit of 10,000 landings before they must be replaced with solid fasteners in accordance with Part III of the service bulletin. The blind fasteners must be inspected for loose or missing fasteners after accumulating 3,000 landings since installation or 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings. Blind fasteners installed prior to the effective date of this AD must be replaced prior to the accumulation of 10,000 landings or within 3,000 landings after the effective date of this AD, whichever occurs later.

(h) Incorporation of the permanent repairs in accordance with paragraphs (e) or (f) of this AD terminates the repetitive inspection requirements of paragraph (d) of this AD for that area. Incorporation of the preventative modification described in Part IV of the Accomplishment Instructions of Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, or Revision 4, dated June 27, 1991, terminates the repetitive inspection requirement of paragraph (d) of this AD for that area.

(i) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO). The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 31, 1992.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-8022 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-55-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DH-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Division Model DHC-7 series airplanes. This proposal would require a detailed inspection to detect corrosion of the main landing gear (MLG) emergency down release cables, and replacement, if necessary. This proposal is prompted by a report of corrosion found underneath the anti-friction sleeve of the two MLG emergency down release cables. The actions specified by the proposed AD are intended to prevent undetected corrosion from rendering either or both MLG emergency down release cables ineffective for extension. Failure of the cables to extend could result in a gear-up landing.

DATES: Comments must be received by June 1, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-55-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT:

Mr. Danko Kramar, Systems and Equipment Branch, ANE-173, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-8427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-55-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-55-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC-7 series airplanes. Transport Canada Aviation advises that a case has been reported of corrosion found underneath the two MLG emergency down release cables, in the area covered by the anti-friction sleeve. This condition, if not corrected, could result in undetected corrosion of the MLG emergency down release cables rendering either or both cables

ineffective for extension. Failure of these cables to extend could result in a gear-up landing.

Boeing of Canada, Ltd., de Havilland Division, has issued Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991, which describes procedures for a detailed inspection of the MLG emergency down release cables to detect corrosion, and replacement of the cable(s), if necessary. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-92-02 in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a detailed inspection of the left- and right-hand MLG emergency down release cables to detect corrosion, and replacement of the cable(s), if necessary. Either stainless steel cables (referred to as "Post-Modification Number 7/2609") or carbon steel cables (referred to as "Pre-Modification Number 7/2609") may be used as replacement cables. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Installation of cables manufactured from carbon steel as replacement cables should be considered interim action only. The FAA is considering additional rulemaking to require installation of left- and right-hand MLG emergency down release cables manufactured from stainless steel.

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$15,180.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Docket 92-NM-55-AD.

Applicability: Model DHC-7 series airplanes; on which stainless steel cables, Post-Modification Number 7/2609, have not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a gear-up landing, accomplishing the following:

(a) Within 30 days after the effective date of this AD, perform a detailed inspection of the left- and right-hand main landing gear (MLG) emergency down release cables to detect corrosion, in accordance with de Havilland Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991.

(b) If any corrosion is detected as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace both cable assemblies with either stainless steel cables (Post-Modification Number 7/2609) or carbon steel cables (Pre-Modification 7/2609), in accordance with de Havilland Alert Service Bulletin A7-32-94, Revision A, dated November 15, 1991.

(c) If no corrosion is detected as a result of the inspection required by paragraph (a) of this AD, no further action is necessary.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 31, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-8024 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-211-AD]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, that would have required reinforcement of the vertical stabilizer; and, for certain airplanes, an inspection to detect cracks in the vertical stabilizer, and repair, if necessary. That proposal was prompted by full-scale fatigue testing which revealed cracks in the surface and underlying structure of the vertical stabilizer. This action revises the proposed rule by including inspection and modification requirements, in lieu of the inspection and reinforcement requirements originally proposed; and revises the applicability of the rule. The actions specified by this proposed AD are intended to prevent reduced structural capability of the vertical stabilizer.

DATES: Comments must be received by May 11, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-211-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-211-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-211-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the *Federal Register* on November 18, 1991 (56 FR 58190). That NPRM would have required reinforcement of the vertical stabilizer; and for certain airplanes, an inspection to detect cracks in the vertical stabilizer, and repair, if necessary. That NPRM was prompted by full-scale fatigue testing which revealed cracks in the surface and underlying structure of the vertical stabilizer. Such cracking, if not detected and corrected in a timely manner, could result in reduced structural capability of the vertical stabilizer.

Since the issuance of the NPRM, Fokker has superseded Service Bulletin SBF100-55-001, as cited in the NPRM, with Service Bulletin SBF-55-011, dated October 1, 1991. The new service bulletin revises the airplane effectivity by eliminating certain airplanes; reduces the inspections and modifications for certain serial number airplanes; and changes the rivets and bolts to be removed and the holes to be inspected. In addition, the service bulletin describes procedures to perform a one-time inspection to detect cracks in certain rivet holes of the vertical stabilizer, and repair, if necessary. The service bulletin also describes a modification of the vertical stabilizer; this modification is made to the external structure of the vertical stabilizer and, for certain airplanes, includes the installation of three reinforcing plates. Accomplishment of the modifications described is expected to result in an unlimited life of the vertical stabilizer, provided no cracks are present in the basic structure. The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, has classified Fokker Service Bulletin SBF100-55-011, dated October 1, 1991, as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 91-117 (which supersedes BLA No. 89-62, Issue 2) in order to assure the continued airworthiness of these airplanes in the Netherlands.

Subsequently, the FAA has determined that, in order to fully address the unsafe condition, the proposed rule must be revised to include requirements for a one-time section to detect cracks in the rivet holes of the vertical stabilizer, and repair, if necessary; and modification of the vertical stabilizer. These actions would be required in lieu of the inspection and reinforcement requirements proposed in the original Notice. Additionally, the proposal is revised to cite the Fokker Service Bulletin SBF100-55-011, dated October 1, 1991, as the appropriate source for service information. The applicability of the rule has been revised to reflect the correct airplane serial numbers.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Currently, no airplanes of U.S. registry would be affected by this proposed AD. However, should one of the affected airplanes be imported and placed on the U.S. Register in the future, it would take approximately 60 work hours per airplane to accomplish the proposed actions, and the average labor rate would be \$55 per work hour. Required parts would cost approximately \$3,808 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$7,108 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 91-NM-211-AD.

Applicability: Model F-28 Mark 0100 series airplanes; serial numbers 11244, 11245, 11250 through 11256, and 11268 through 11273; certificated in any category.

Compliance: Required prior to the accumulation of 6,500 landings, or within 60 days after the effective date of this AD, whichever occurs later, unless accomplished previously.

To prevent reduced structural capability of the vertical stabilizer, accomplish the following:

(a) For airplane serial numbers 11244, and 11250 through 11256, disassemble the vertical stabilizer in accordance with part 1, steps A through C., of Fokker Service Bulletin SBF100-55-011, dated October 1, 1991.

(1) For airplanes that have accumulated 3,000 or fewer landings at the time the airplane is disassembled to comply with paragraph (a) of this AD, modify the vertical stabilizer, in accordance with part 1, steps E through G., of the service bulletin.

(2) For airplanes that have accumulated more than 3,000 landings at the time the airplane is disassembled to comply with paragraph (a) of this AD, inspect the rivet holes for cracks, in accordance with part 1, step D., of the service bulletin.

(i) If no cracks are found, or if cracks are found that are less than 0.8 mm in length, modify the vertical stabilizer, in accordance with part 1, steps E through G., of the service bulletin.

(ii) If any crack is found that is 0.8 mm or longer, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(b) For airplane serial numbers 11245, and 11268 through 11273, disassemble the vertical stabilizer in accordance with part 2, steps A through C., of Fokker Service Bulletin SBF100-55-011, dated October 1, 1991.

(1) For airplanes that have accumulated 3,000 or fewer landings at the time the airplane is disassembled to comply with paragraph (b) of this AD, modify the vertical

stabilizer, in accordance with part 2, steps E through G., of the service bulletin.

(2) For airplanes that have accumulated more than 3,000 landings at the time the airplane is disassembled to comply with paragraph (b) of this AD, inspect the rivet holes for cracks, in accordance with part 2, step D., of the service bulletin.

(i) If no cracks are found, or if cracks are found that are less than 0.8 mm in length, modify the vertical stabilizer, in accordance with part 2, steps E through G., of the service bulletin.

(ii) If any crack is found that is 0.8 mm or longer, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 30, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 92-8020 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-43-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9-80 series and MD-88 airplanes. This proposal would require initial inspection and subsequent modification of galley power feeder wire assemblies. This proposal is prompted by a report of smoke in the cabin coming from the ceiling panels during flight due to chafing of the wire assembly on ceiling panel attachments. The actions specified by the proposed AD are intended to prevent chafing damage to the wire assemblies that can lead to arcing and smoke in the cabin.

DATE: Comments must be received by June 1, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-43-AD, 1601 Lind Avenue SW, Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90848-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Elvin K. Wheeler, Los Angeles Aircraft Certification Office, ANM-130L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5344; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-43-AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-43-AD, 1601 Lind Avenue SW, Renton, Washington 98055-4056.

Discussion

One operator of McDonnell Douglas Model DC-9-80 series airplanes reported one instance of smoke in the cabin coming from the ceiling panels during flight. The smoke was caused by a migrating galley power feeder wire assembly chafing on ceiling panel attachments. This chafing condition and subsequent arcing damaged adjacent structure and insulation blankets. This condition, if not corrected, could result in arcing and smoke in the passenger cabin.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A24-132, Revision 1, dated March 2, 1992, that describes procedures for a one-time inspection to detect migration and/or chafing damage of the galley power feeder wire assemblies located above the overhead ceiling panels. The service bulletin also describes procedures for a modification of the assembly, involving wrapping the wires with protective sleeving and installing tie mounts to prevent the wire assembly from migrating.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection and subsequent modification of the galley power feeder wire assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 656 McDonnell Douglas Model DC-9-80 series and Model MD-88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 330 airplanes of U.S. registry would be affected by this proposed AD. The FAA estimates that it would take approximately 4 work hours per airplane to accomplish the proposed inspection; that it would take approximately 43 work hours per airplane to accomplish the proposed modification; and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$853,050, or \$2,585 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration purposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 92-NM-43.

Applicability: Model DC-9-81, -82, -83, and -87 (MD-81, -82, -83, and -87) series airplanes and Model MD-88 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the wire assemblies that could lead to arcing and smoke in the passenger cabin, accomplish the following:

(a) Prior to or upon the accumulation of 9,000 total flight hours or within 6 months after the effective date of this AD, whichever occurs later, unless previously accomplished

within the last 60 days, inspect the galley power feeder wire assemblies, in accordance with McDonnell Douglas Alert Service Bulletin A24-132, Revision 1, dated March 2, 1992.

(b) If no damage is detected as a result of the inspection required by paragraph (a) of this AD, within 4,500 flight hours of the initial inspection, modify the galley power feeder wire assemblies, in accordance with McDonnell Douglas Alert Service Bulletin A24-132, Revision 1, dated March 2, 1992.

(c) If damage is detected as a result of the inspection required by paragraph (a) of this AD, accomplish subparagraph (c)(1) and (c)(2) of this AD:

(1) Prior to further flight, repair the damaged wire insulator (install Protective sleeving), in accordance with McDonnell Douglas Alert Service Bulletin A24-132, Revision 1, dated March 2, 1992;

(2) Within 4,500 flight hours after accomplishing the inspection required by paragraph (a) of this AD, modify the galley power feeder wire assemblies, in accordance with McDonnell Douglas Alert Service Bulletin A24-132, Revision 1, dated March 2, 1992.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(e) Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 31, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-8023 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

(Airspace Docket No. 91-ANE-32)

Proposed Amendment to Control Zone; Hyannis, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces an extension of the comment period for a Notice of Proposed Rulemaking (NPRM) that proposes to amend the Hyannis, Massachusetts Control Zone. This action is being taken because the planned relocation of the Hyannis VORTAC to North Truro, originally scheduled for June, 1992, has been delayed until early 1993.

DATES: Comments must be received on or before October 31, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, New England Region, Docket No. 91-ANE-32, Federal Aviation Administration, Burlington, MA 01803-5299.

The Official Docket may be examined in the Office of the Assistant Chief, Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rick Miller, System Management Branch, ANE-530, Federal Aviation Administration, Burlington, MA 01803-5299; Telephone: (617) 273-7146.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 91-ANE-32 published on October 11, 1991 (56 FR 51352) proposed to amend the Hyannis, Massachusetts, Control Zone. This action extends the comment period closing date on that airspace docket from January 1, 1992, to October 31, 1992. The planned relocation of the Hyannis VORTAC (HYA) to North Truro, Massachusetts, originally scheduled for June, 1992, has been delayed until early 1993. Therefore, the Hyannis, Massachusetts Control Zone will not be redefined effective June 25, 1992, as proposed. The FAA now expects the Hyannis VORTAC to be relocated to North Truro in January or February of 1993. Accordingly, the comment period of this proposal is extended to October 31, 1992.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

Extension of Comment Period

The comment period closing date on Airspace Docket No. 91-ANE-32 is hereby extended to October 31, 1992.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565; 3 CFR 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Burlington, Massachusetts, on March 27, 1992.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 92-7928 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 26B)]

Industrial Development Activities Exemption—Non-Exempt Agricultural Shippers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In a separate proceeding, Ex Parte No. 346 (Sub-No. 26), the Commission is adopting a final rule exempting as a class certain market development activities from the anti-rebating provisions of the Interstate Commerce Act, 49 U.S.C. 10761(a), 10762(a)(1), 11902, 11903, and 11904(a), originally enacted as the Elkins Act. This would permit railroads to engage in these pre-movement, non-transportation activities without fear of prosecution. Some commenters in Ex Parte No. 346 (Sub-No. 26) have indicated that special considerations may apply for market development activities involving agricultural shippers. As explained in our full decision in Ex Parte No. 346 (Sub-No. 26), we preliminarily conclude that there is no need to revoke the exemption, delay its effect, or provide relief to non-exempt agricultural shippers. In this proceeding, the Commission will further investigate whether the exemption should be revoked or modified by the adoption of special disclosure and/or documentation requirements for activities related to movements of agricultural commodities that are not exempt from our regulation.

DATES: Any person interested in participating in this proceeding as a party of record (entitled to file and receive written comments) must file a notice of intent to do so by May 8, 1992. We will issue a service list of the parties of record shortly thereafter. Initial comments must be filed within 60 days of service of the service list. All parties will have 30 days after service of the service list to reply. Comments must be served on all parties of record.

ADDRESSES: Send an original and 10 copies of all comments to: Office of the Secretary, Case Control Branch, Attn: Ex Parte No. 346 (Sub-No. 26B), Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660 (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision in Ex Parte No. 346 (Sub-No. 26). That decision contains our preliminary conclusions and discusses the factual and legal issues that the parties should address in this proceeding. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: March 24, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-8058 Filed 4-7-92; 10:56 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration (NOAA)****50 CFR Part 672**

[Docket No. 920367-2067]

RIN 0649-AD67

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to establish authority for the Secretary of Commerce (Secretary) to allocate a Pacific halibut bycatch allowance to the demersal shelf rockfish (DSR) hook-and-line fishery conducted in the Southeast Outside (SEO) District in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to make this fishery separately accountable for incidental catches of Pacific halibut and to prevent an unnecessary fishery closure. By doing so, this regulation will foster economic growth. NMFS also proposes to define directed fishing standards for DSR. This action is necessary to limit the amounts of DSR that might be taken as bycatch in other fisheries. These actions are intended to promote the goals and

objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

DATES: Comments are invited until May 8, 1992.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment (EA) are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:**Background**

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA are managed by the Secretary under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR part 672. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

At times, amendments to the FMP and/or its implementing regulations are necessary to resolve problems pertaining to management of the groundfish fisheries. The structure of the FMP allows certain measures to be changed by regulatory amendments without amending the FMP itself. This action contains two regulatory amendments that are authorized by the FMP. First, it proposes authority for the Secretary, in consultation with the Council, to allocate a portion of the Pacific halibut prohibited species catch (PSC) limit specified for hook-and-line gear to the DSR hook-and-line fishery in the Southeast Outside District of the Eastern Regulatory Area. Second, it proposes to establish directed fishing standards for DSR that would limit amounts of DSR catches that could be retained by vessels during directed fishing closures for DSR. Both regulatory amendments were recommended by the Council at its December 2-9, 1991, meeting.

A description of, and reasons for, the proposed regulatory amendments follows.

Establish Authority to Allocate a Pacific Halibut Bycatch Allowance to the DSR Fishery

The FMP, at section 4.2.3, authorizes the apportionment of part of the halibut PSC mortality limit, as bycatch allowances, to specific gear types and to particular directed fisheries. Implementing regulations at 50 CFR 672.20(f) authorize the Secretary to establish annual halibut PSC mortality limits for trawl and hook-and-line gear, but not to directed fisheries. These PSC limit allowances may further be allocated seasonally under existing regulations. If a PSC limit or the seasonal allocation of a limit is reached by one of these gear types, then no further directed groundfish fishing by operators of vessels using that gear type is allowed during the remainder of the fishing season or the fishing year. If the halibut PSC limit specified for hook-and-line gear is reached, all directed fisheries, including the directed DSR fishery, by operators of vessels using hook-and-line gear are prohibited.

This proposal would amend regulations at 50 CFR 672.20(f) to authorize the Secretary to allocate part of the PSC mortality limit that is specified for hook-and-line gear specifically as a bycatch allowance to the DSR hook-and-line directed fishery in the SEO District. Once allocated, this bycatch allowance would be separate from the remaining bycatch allowance apportioned to hook-and-line gear.

If this proposal were implemented, the DSR hook-and-line directed fishery would be supported by the separate bycatch allowance during the fishing year. If the DSR hook-and-line directed fishery reached this allowance, further directed fishing for DSR would be prohibited, but other directed fishing with hook-and-line gear could continue. Likewise, the attainment of the general PSC allowance would not affect the DSR hook-and-line directed fishery.

In 1990, the DSR hook-and-line fishery was exempted from closure by emergency rule when the general halibut PSC allowance was reached. However, in 1991 the DSR directed fishery was not exempted. When the halibut bycatch apportionment to hook-and-line gear was reached on July 7, 1991, all hook-and-line fisheries were prohibited on that date for the remainder of the year. Part of the 1991 DSR total allowable catch (TAC) specification was not harvested as a result of the closure.

When the Council recommended that the 1990 DSR directed fishery be exempted from closure by emergency rule should the halibut bycatch

allowance allocated to hook-and-line gear be reached, it reviewed observations from the Alaska Department of Fish and Game (ADFG), which suggested that fishing practices by DSR fishermen resulted in a lower mortality rate of halibut incidentally taken in this fishery. These fishing practices were described as including the use of snap-on gangions with hooks widely spread on the groundline, which promotes a slower paced fishery compared to other hook-and-line fisheries in which gangions are narrowly spaced allowing a faster paced fishery. In faster paced fisheries, gangions are tied to the groundline, which is rapidly retrieved on the vessel. Some vessels pull the groundline through a device called an automated hook stripper, or "crucifier," which is used to dislodge a hooked fish, which then falls into a holding bin. Halibut caught on vessels with crucifiers usually suffer torn jaws as the hook is pulled out, which increases the overall mortality rate. Also, in faster paced fisheries, fishermen often will impale each fish with a sharp gaff, and then flip the fish off the hook. Again, such handling practices increase halibut mortality rates.

Although NMFS had no other direct information to demonstrate lower mortality rates in the DSR directed fishery, it recognized that more information might become available if the fishery were exempted during 1990 and independent observers were placed on board representative vessels to obtain information. Given this consideration, NMFS implemented the emergency rule as recommended by the Council (55 FR 33715, August 17, 1990). With the exception of the DSR directed fishery, hook-and-line fisheries were closed on June 30, 1990, upon reaching the halibut PSC limit specified for this gear type. The DSR directed fishery continued for the remainder of the year. No independent observations were made to determine bycatch mortality rates. Therefore, NMFS was unable to justify exempting the DSR directed fishery after 1990.

This regulation would amend those procedures in regulations in which the Council, during its September meeting, would recommend a portion of the halibut PSC mortality limit specified for hook-and-line gear to be allocated specifically as a bycatch allowance for the DSR directed fishery. The Secretary would propose this allowance in the Federal Register and comments would be invited.

The Council, during its December meeting, would recommend a final portion of the halibut PSC mortality limit

for hook-and-line gear to be allocated specifically as a bycatch allowance for the DSR directed fishery. The Secretary would then implement the allowance to govern halibut bycatches in the DSR directed fishery for the subsequent fishing year. This is the same procedure contained in regulations that presently govern apportionments of bycatch allowances to the hook-and-line and trawl fisheries.

Establish Directed Fishing Standards for the DSR Fishery

NMFS proposes to establish directed fishing standards for DSR in the SEO District. These standards would govern amounts of DSR considered to be the result of directed fishing for DSR. Amounts of DSR in proportions that are less than the specified directed fishing standards would be considered to be retainable bycatch occurring in other directed fisheries. Regulations are proposed to amend 50 CFR 672.1(d), which is the regulatory section that currently authorizes the State of Alaska (State) to establish directed fishing standards for operators of State-registered vessels fishing in the EEZ. The proposed change would return authority for the directed fishing standards to the Secretary. The Council has been advised by the ADFG and by NMFS that the Secretary is better able to promulgate timely changes to the directed fishing standards than is the State. Regulations also are proposed to amend 50 CFR 672.20(g), which would establish directed fishing standards for DSR in other target fisheries.

With respect to DSR, directed fishing standards presently are governed by a State regulation at 5 Alaska Administrative Code (AAC) 28.170, Possession and Landing Requirements. This regulation applies to vessels in waters off Alaska, including the EEZ, that are registered under the laws of the State. It stipulates that no Commercial Fishery Entry Commission permit holder may have on board a commercial fishing vessel amounts of DSR in excess of 10 percent, by weight, of all species of fish on board the vessel when the directed taking of DSR is prohibited, or when incidentally caught by gear other than longline, hand troll gear, or mechanical jigging machines. The purpose of the State's regulation is to prohibit directed fishing for DSR by vessels using trawl gear, and to limit amounts of DSR in hook-and-line fisheries when the DSR directed fishery is closed.

NMFS has reviewed bycatch rates of DSR in fisheries for other target species categories. Certain of these categories (e.g., deep water flatfish, "other rockfish," thornyhead rockfish) occur in

water much deeper than where DSR typically are found. Unless vessel operators target on DSR to "top off" catches of other groundfish species, bycatch rates of DSR in fisheries for these target species categories typically are very small compared to bycatch rates in fisheries for other target species categories in shallower water. For example, the 1990 trawl catch of DSR in the SEO District was about 0.5 metric tons (mt), whereas the reported trawl catch of slope rockfish was 1,500 mt. If all of the DSR catch occurred in the "other rockfish" fishery, the bycatch rate would have been about 0.03 percent. The State's allowable 10 percent rate is much higher than would be needed to support DSR bycatch needs in these deep water trawl fisheries. Although the natural bycatch rate of DSR associated with deep water fisheries is minimal, these fisheries could result in high bycatches of DSR if vessels "topped off" catches of other groundfish species with up to 10 percent DSR, which would be legal under present regulations governing permissible bycatch amounts (5 AAC 28.170). NMFS recommends that the directed fishing standard for DSR be 1 percent of the aggregate amounts of deep water flatfish, "other rockfish," and thornyhead rockfish retained by the same vessel at any time during the same trip. Compared to a directed fishing standard of 10 percent, a directed fishing standard of 1 percent is expected to remove the incentive to top off catches with DSR. At the same time, a 1 percent directed fishing standard would reduce waste caused by discarding DSR at sea when slightly larger bycatches inadvertently occur while fishing for other fish species.

Bycatch rates of DSR would be expected to be higher in catches of other target species categories (e.g., arrowtooth flounder, shallow water flatfish, flathead sole, and Pacific cod) that occur in shallow water depths. Tarket fisheries by any bear type for these species in the SEO District have not been significant in 1991 or previous years. Therefore, empirical data on DSR bycatch rates in this fisheries are scant. Nonetheless, NMFS believes that trawl effort directed at these species could result in substantial bycatch amounts DSR, because they commingle in the same water depths. NMFS recommends that the directed fishing standard for DSR also accommodate 10 percent of the aggregate amounts of these species retained by the vessel at any time during the same trip.

To monitor bycatches of DSR on board a vessel, management agencies

would add the aggregate round weight equivalent amount of deep water flatfish, "other rockfish," and thornyhead rockfish retained on board during a trip and multiply the sum of 1 percent. Then, management agencies would add the aggregate round weight equivalent amount of other species (except DSR) retained on board during a trip and multiply the sum by 10 percent. The two sums would be added together. The resulting sum would be compared to the round weight equivalent amount of DSR on board. Amounts of DSR in excess of the sum would constitute a violation.

Classification

The Assistant Administrator of Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the ground fishery off Alaska and that is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for this rule and concluded that no significant impact on the environment will occur as result of its implementation. The public may obtain a copy of the EA from the Regional Director (see ADDRESSES).

The initial regulatory flexibility analysis (IRFA), prepared as part of the EA/IR/IFRA, concludes that this proposed rule, if adopted, would have significant effects on small entities. Information contained in the IRFA is summarized as follows.

Under the status quo alternative to do nothing, gross revenue for hook-and-line fishermen would be lost if the DSR fishery were prematurely closed. As an example, when all hook-and-line fisheries were closed on July 8, 1991, about 70 mt of DSR remained of the 425-mt TAC specified for DSR in 1991. Assuming an exvessel price of \$0.65 per pound (round weight), this amount would have been worth about \$100,000. Assuming a multiplied of 3 to amount for additional earnings by other industries that depend on fishermen's earnings from the DSR harvest, 70 mt of DSR might have been worth \$300,000. This amount represent an amount foregone in 1991 as a result of premature closure caused by the attainment of the halibut PSC limit specified for a year. Each of 40 vessels, economically depending on the 1991 DSR fishery, might have lost \$2,500. Because the potential of these losses would be prevented if the DSR fishery is not unnecessarily closed, this regulation all foster economic growth.

The extent of economic loss varies in any one year depending on the amount of the DSR harvest prior to closure. The above estimate of \$2,500 per vessel probably represents a lower limit on gross revenue lost by each fisherman who participates in the DSR fishery. Conversely, under the proposed regulatory amendment, the above value

represents a lower limit on gross revenue that might be earned by each fisherman.

NMFS concluded formal Section 7 Consultation on the FMP and fisheries. The biological opinions issued for the consultations concluded that the FMP and fisheries are not likely to jeopardize the continued existence and recovery of any endangered or threatened species under the jurisdictions of NMFS. Adoption of the management measures described in this proposed rule will not affect listed species in a way that was not already considered in the aforementioned biological opinions. NMFS has determined that no further section 7 Consultation is required for adoption of this action.

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Based on the socioeconomic impacts discussed in the ER/RIR/IRFA prepared by the Alaska Region, NMFS concluded that none of the proposed measures in this rule would cause impacts considered significant for purposes of the E.O.

This rule does not include a collection of information required subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implication sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 672

Fisheries, Report and recordkeeping.

Dated: April 2, 1992.

Samuel W. McKeen,

Acting Assistant Administration for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, part 672 is amended as follows:

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.1, paragraph (d) is revised to read as follows:

§ 672.1 Purpose and scope.

* * * * *

(d) The following State of Alaska regulations are not preempted by this part for vessels regulated under this part fishing for demersal shelf rockfish in the Southeast Outside District, and that are registered under the laws of the State of Alaska:

5 AAC 28.110. Fishing seasons.

5 AAC 28.130. Gear.

5 AAC 28.160. Harvest guidelines.

5 AAC 28.190. Harvest of bait by commercial permit holders.

3. In § 672.20, paragraph (g)(3) is removed and paragraphs (f)(1)(ii), (f)(2)(i), (g)(1), and (g)(2) are revised to read as follows:

§ 672.20 General limitations.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(ii) Hook-and-line gear. (A)

Groundfish other than demersal shelf rockfish in the Southeast Outside District. If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using hook-and-line gear in groundfish fisheries other than the directed fishery for demersal shelf rockfish in the Southeast Outside District will reach their proportional share of the seasonal allocation of the halibut PSC limit specified for hook-and-line gear under paragraph (f)(2) of this section, the Regional Director will publish a notice in the Federal Register prohibiting directed fishing for groundfish, other than demersal shelf rockfish, with hook-and-line gear for the remainder of the season to which the PSC allocation applies.

(B) *Demersal shelf rockfish in the Southeast Outside District.* If, during the year, the Regional Director determines that the catch of halibut by operators of vessels who are participating in the Southeast Outside District demersal shelf rockfish directed fishery with hook-and-line gear will reach their proportional share of the seasonal allocation of the halibut PSC limit specified for hook-and-line gear under paragraph (f)(2) of this section, the Regional Director will publish a notice

in the Federal Register prohibiting directed fishing for demersal shelf rockfish with hook-and-line gear in the Southeast Outside District for the remainder of the season to which the PSC allocation applies.

(2) *Halibut PSC limits.* (i) *Notices of proposed halibut PSC limits.* After consultation with the Council, the Secretary will publish a notice in the Federal Register specifying the proposed halibut PSC limit or vessels using trawl gear. The notice also will specify the proposed halibut PSC limit for vessels using hook-and-line gear, which may be further apportioned to vessels participating in the directed demersal shelf rockfish fishery in the Southeast Outside District of the Eastern Regulatory Area. The notice also may specify halibut PSC limits for vessels using pot gear. Each PSC limit proposed for gear types under this paragraph may be allocated by season under paragraph (f)(2)(iii) of this section. Each halibut PSC limit may be apportioned among the regulatory areas and districts of the Gulf of Alaska. Public comments on these proposals will be accepted by the

Secretary for 30 days after publication in the Federal Register.

(g) * * *

(1) *Trawl gear.* (i) *Sablefish.* The operator of a vessel is engaged in directed fishing for sablefish if he retains at any particular time during a trip sablefish caught using trawl gear in an amount equal to or greater than:

(A) 15 percent of the aggregate amount of deep water flatfish, flathead sole, and rockfish species of the genera *Sebastes* and *Sebastolobus* retained at the same time by the vessel during the same trip; plus

(B) Five percent of the total amount of all fish species not identified under paragraph (g)(1)(i)(A) of this section retained at the same time by the vessel during the same trip.

(ii) *Demersal shelf rockfish.* The operator of a vessel is engaged in directed fishing for demersal shelf rockfish if he retains at any particular time during a trip demersal shelf rockfish caught using trawl gear in an amount equal to or greater than 1 percent of the aggregate amount of deep water flatfish, flathead sole, "other

rockfish," sablefish, and thornyhead rockfish, plus 10 percent of the amount of all other fish species retained at the same time by the vessel during the same trip.

(2) *Hood-and-line gear.* (i) *Sablefish.* The operator of a vessel is engaged in directed fishing for sablefish if he retains at any particular time during a trip sablefish caught using hook-and-line gear in an amount equal to or greater than 4 percent of the total amount of all other fish species retained at the same time by the vessel during the same trip.

(ii) *Demersal shelf rockfish.* The operator of a vessel is engaged in the directed fishing for demersal shelf rockfish if he retains at any particular time during a trip demersal shelf rockfish caught using hook-and-line gear in an amount equal to or greater than 1 percent of the aggregate amount of deep water flatfish, flathead sole, "other rockfish," sablefish, and thornyhead rockfish, plus 10 percent of the amount of all other fish species retained at the same time by the vessel during the same trip.

[FR Doc. 92-7892 Filed 4-7-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 57, No. 68

Wednesday, April 8, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Suitability Studies for Six Rivers Being Considered for National Wild and Scenic River Status; Daniel Boone National Forest; Jackson, Laurel, McCreary, Pulaski, and Whitley Counties; Kentucky

AGENCY: Forest Service, USDA

ACTION: Revised notice; correction of comment period.

SUMMARY: This notice corrects the comment period identified in the Notice of Intent, published in the *Federal Register* of February 4, 1992, (57 FR 4185-4186), from 60 days to 90 days. On page 4186, first column, paragraph seven, is corrected to read as follows: The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the *Federal Register*. In addition on page 4186, second column, paragraph one, last sentence, is corrected to read as follows: Because of these court rulings, it is very important that those interested in this proposal participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

FOR FURTHER INFORMATION CONTACT: Jorge Hersel, Dispersed Recreation Specialist, Daniel Boone National Forest, Stanton Ranger District, 705 W. College Avenue, Stanton, Kentucky 40380, (606) 663-2852.

Dated: April 1, 1992.

Robert B. Erickson,
Deputy Regional Forester.

[FR Doc. 92-8005 Filed 4-7-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7-92]

Proposed Foreign-Trade Zone; Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Pinellas County Industry Council (PCIC) (a Florida public corporation), requesting authority to establish a general-purpose foreign-trade zone in Pinellas County, Florida, within the St. Petersburg port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 30, 1992. The applicant is authorized to make the proposal under section 288.36, Florida Statutes Annotated (1987).

The proposed foreign-trade zone would consist of 2 sites in the St. Petersburg-Clearwater area. Site 1 is the St. Petersburg-Clearwater International Airport complex (1,900 acres) in Pinellas County between the Cities of St. Petersburg and Clearwater, some 15 miles west of Tampa. Zone activity is expected to take place within the airport area designated for office/warehousing and light manufacturing (350 acres). A warehouse facility within the Airport Business Center would be available for initial zone use. Site 2 involves the Port of St. Petersburg (3 acres) in St. Petersburg on Tampa Bay. Site 1 is owned by Pinellas County and operated by the county's aviation department. Site 2 is owned and operated by the City of St. Petersburg. PCIC will operate the zone.

The application contains evidence of the need for zone services in the St. Petersburg-Clearwater area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as personal computers, marine electronic equipment, fitness and health equipment, aircraft tools and underwater coatings. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), a member of the FTZ

Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 8, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 22, 1992).

While no public hearing has been scheduled for the FTZ Board, consideration will be given to such a hearing during the review.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations.

U.S. Department of Commerce, District Office, 128 North Osceola Avenue, Clearwater, Florida 34615.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 1, 1992.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 92-8081 Filed 4-7-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section § 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the

Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW:

Not later than April 30, 1992, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

| Antidumping duty proceedings | Period |
|---------------------------------------------------------------------|-------------------|
| Canada: Sugar and Syrups (A-122-085) | 04/01/91-03/31/92 |
| France: Sorbital (A-427-001) | 04/01/91-03/31/92 |
| Greece: Electrolytic Manganese Dioxide (A-484-801) | 04/01/91-03/31/92 |
| Italy: Spun Acrylic Yarn (A-475-084) | 04/01/91-03/31/92 |
| Japan: Calcium Hypochlorite (A-588-401) | 04/01/91-03/31/92 |
| Japan: Cyanuric Acid (A-588-019) | 04/01/91-03/31/92 |
| Japan: Dichloroisocyanurates (A-588-019) | 04/01/91-03/31/92 |
| Japan: Electrolytic Manganese Dioxide (A-588-806) | 04/01/91-03/31/92 |
| Japan: 3.5" Microdisks and Media Thereof (A-588-802) | 04/01/91-03/31/92 |
| Japan: Roller Chain, Other Than Bicycle (A-588-028) | 04/01/91-03/31/92 |
| Japan: Spun Acrylic Yarn (A-588-086) | 04/01/91-03/31/92 |
| Kenya: Standard Carnations (A-779-602) | 04/01/91-03/31/92 |
| Mexico: Certain Fresh Cut Flowers (A-201-801) | 04/01/91-03/31/92 |
| Norway: Fresh and Chilled Atlantic Salmon (A-403-801) | 10/03/90-03/31/92 |
| Taiwan: Color Television Receivers (A-583-009) | 04/01/91-03/31/92 |
| The Republic of Korea: Color Television Receivers (A-580-008) | 04/01/91-03/31/92 |
| Countervailing Duty Proceedings | |
| Argentina: Wool (C-357-002) | 01/01/91-12/31/91 |
| Brazil: Pig Iron (C-351-062) | 01/01/91-12/31/91 |
| Malaysia: Carbon Steel Wire Rod (C-557-701) | 01/01/91-12/31/91 |
| Mexico: Leather Wearing Apparel (C-201-001) | 01/01/91-12/31/91 |
| Norway: Fresh and Chilled Atlantic Salmon (C-403-802) | 06/29/90-10/28/90 |
| | 04/12/91-12/31/91 |
| Peru: Pompon Chrysanthemums (C-333-601) | 01/01/91-12/31/91 |
| Thailand: Rice (C-549-503) | 01/01/91-12/31/91 |

In accordance with § 353.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistance Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the *Federal Register* a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by April 30, 1992.

If the Department does not receive by April 30, 1992, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 30, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-7977 Filed 4-7-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the *Federal Register* identifying the applicant and summarizing its proposed export product.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the dates of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-4A016."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 88-00016 issued on February 3, 1989 (54 FR 6312, February 9, 1989). This certificate was previously amended on June 26, 1990 (55 FR 27292, July 2, 1990) and on August 28, 1991 (56 FR 42596).

Summary of the Application

Applicant: Wood Machinery Manufacturers of America, 1900 Arch Street, Philadelphia, PA 19103.

Contract: John S. Satagaj, WMMA Counsel, 1156 15th St. NW., suite 510, Washington, DC 20005, Telephone 202-639-8888.

Application No.: 88-4A016.

Date Deemed Submitted: March 25, 1992.

The Wood Machinery Manufacturers Association seeks to amend its certificate to:

1. Delete American Machine Corp, Van Nuys, CA; and Montaco, Inc., Orlando, FL

2. Add the following "Members" to the Certificate: 3K Machinery Co., Inc., New Albany, NY; Kimwood Corp. Cootage Grove, OR; Ligna Machinery, Inc., Burlington, NC; Mattison Machine Works, Rockford, IL; Onsrud Cutter, Inc., Libertyville, IL; Porter-Cable Corporation, Jackson, TN; Ritter Manufacturing, Inc., Antioch, CA; Yates-American Machine Co., Beloit, WI; and Wisconsin Knife Works, Beloit, WI.

Dated: April 2, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-8003 Filed 4-7-92; 8:45 am]

BILLING CODE 3510-DR-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 8(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-025.

Applicant: University of Miami School of Medicine, Miami Project to Cure Paralysis, RMSB 1600 NE., 10th Avenue, Miami, FL 33136.

Instrument: Electron Microscope, Model CM-10.

Manufacturer: N.V. Philips, The Netherlands.

Intended Use: The instrument will be used for spinal cord injury research that requires careful measurements of subtle changes in the nervous system. Electron microscopy will be key in confirming the presence of nonmyelinated axons in injured human spinal cord. Research will be concentrated on the objective of seeking ways to reconstitute neural systems that have been disrupted. The instrument will also be used to train graduate students and postdoctoral fellows so that they may use this microscope as a tool in their future work.

Application Received by
Commissioner of Customs: February 21, 1992.

Docket Number: 92-026.

Applicant: Virginia Polytechnic Institute and State University, Chemical Engineering, 133 Randolph Hall, Blacksburg, VA 24061-0211.

Instrument: Distillation Unit, Model CH81.

Manufacturer: NORMAG, Germany.

Intended Use: The instrument will be used in the study of distillation process which is extremely important for chemical engineers to study.

Application Received by
Commissioner of Customs: February 25, 1992.

Docket Number: 92-027.

Applicant: U.S. Geological Survey, EROS Data Center, Munt Federal Building, Sioux Falls, SD 57198.

Instrument: Color Digital Image Recorder, Model Color fire 240.

Manufacturer: Cymbolic Sciences International, Canada.

Intended Use: The instrument will be used to prepare both intermediate and final image products of satellite information from the Landsat or SPOT satellites or from digitized aircraft acquired through the National Aerial Photography Program. It provides the capability for printing digital imagery on 241 mm color roll film from image data supplied by a host computer or from a test-pattern generator.

Application Received by
Commissioner of Customs: March 3, 1992.

Docket Number: 92-028.

Applicant: New York University, FAS Center for Neural Science, 6 Washington Place, New York, NY 10003.

Instrument: Micromanipulator (Right Hand Use).

Manufacturer: Narishige Scientific Instruments, Japan.

Intended Use: The instrument will be used for educational purposes in the courses: Principals of Neuroscience, Behavioral and Integrative Neuroscience and Cellular and Molecular

Neurobiology which deal with the make-up and behavior of neurons.

Application Received by
Commissioner of Customs: February 27, 1992.

Docket Number: 92-029.

Applicant: University of Cincinnati, room 137 McMicken Hall, Cincinnati, OH 45221.

Instrument: ICP Mass Spectrometer, Model PlasmaQuad.

Intended Use: The instrument will be used for studies of solid, liquid and gaseous samples for chemical analysis purposes. Samples will include fly-ash, coal gasification residues, body fluids, freeze dried tissue and cropland samples. These materials will be investigated for their specific trace element content and in some cases the trace element species. In addition, the instrument will be used for education purposes in the courses Chemistry 771, Introduction to Research and Chemistry 971, Research. Research will require all students to do an in depth experimental or theoretical study.

Application Received by
Commissioner of Customs: February 28, 1992.

Docket Number: 92-030.

Applicant: University of Nebraska-Lincoln, Department of Geology, 214 Bessey Hall, Lincoln, NE 68588-0340.

Instrument: Electro-magnetic Geophysical Survey Instrument, Model EM16/EM16R.

Manufacturer: Geonics Ltd., Canada.

Intended Use: The instrument will be used to make measurements of terrain conductivity of subsurface earth materials such as unconsolidated sediments and bedrock that usually includes groundwater. The primary objective for using the instrument in hydrogeological and geotechnical investigations is to delineate the structure, physical characteristics, and chemical nature of the subsurface environment in order to satisfy the overall requirements of the study. In addition, the instrument will be used as part of B.S., M.S. and Ph.D. courses in Hydrogeology, Groundwater Geology, Exploration Geophysics and Introduction to Geophysics and Geochemistry to educate students in the use of geological principles and methods.

Application Received by
Commissioner of Customs: March 3, 1992.

Docket Number: 92-031.

Applicant: University of California, Lawrence Berkeley Laboratory, 1 Cyclotron Road, Berkeley, CA 94720.

Instrument: Electron Microscope, Model EM-002B.

Manufacturer: TOPCON Technologies Inc., Japan.

Intended Use: The instrument will be used to investigate the defects in materials such as dislocations, stacking faults, precipitates and properties of interfaces in metals, ceramics, and semiconductors. The objectives of the experiments include obtaining information about the structural properties of materials which could influence their electrical and optical properties. In addition, the instrument will be used in developing the skills of students in high-resolution and analytical electron microscopy.

Application Received by Commissioner of Customs: March 3, 1992.

Docket Number: 92-032.

Applicant: U.S. Geological Survey, MS963, Box 25046, Denver Federal Center, Denver, CO 80225.

Instrument: Mass Spectrometer, Model MAT 262.

Manufacturer: Finnigan MAT, Germany.

Intended Use: The instrument will be used for studies of rocks, minerals, and ground water from the Yucca Mountain area in southern Nevada. Isotopic compositions of calcium, strontium, neodymium, lead and uranium will be determined for a large number of rock, mineral and water samples using the fully automated and high-precision capabilities of this thermal ionization mass spectrometer.

Application Received by Commissioner of Customs: March 3, 1992.

Docket Number: 92-033.

Applicant: University of Missouri-Kansas City, School of Dentistry, 650 East 25th Street, Kansas City, MO 64108-2795.

Instrument: Scanning Transmission Electron Microscope, Model CM 12.

Manufacturer: N.V. Philips, The Netherlands.

Intended Use: The instrument will be used for research which involves development and thorough characterization of prospective new dental adhesives, polymers, and dental composite matrices.

Application Received by Commissioner of Customs: March 5, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 92-7978 Filed 4-7-92; 8:45 am]

BILLING CODE 3510-09-M

National Institute of Standards and Technology

[Docket No. 920376-2076]

Opportunity To Join a Cooperative Research and Development Consortium for Improving the Processing of Polymer Blends

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks industrial and academic parties interested in entering into a cooperative research consortium on the development of new technology to develop, monitor and control polymer blends. Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99-502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreement with qualified parties. Under this law, NIST may contribute personnel, equipment and facilities—but no funds—to the cooperative research program. NIST intends to conduct a workshop April 20 and 21, 1992 for interested parties. The workshop will identify concepts, measurement techniques, and other tools that can be applied to polymer blends. It will attempt to identify research problems that could provide the underlying chemistry and physics related to technology development of industrial blends and alloys. The workshop will discuss the possible formation of a research consortium including NIST, industry and academia to solve these problems. This is not a grant program.

DATES: Interested parties should contact NIST at the address or telephone number shown below but no later than April 28, 1992.

ADDRESSES: Dr. Charles Han, Polymers Division, Polymers Bldg., room B210, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Charles C. Han, (301) 975-6771.

SUPPLEMENTARY INFORMATION: NIST seeks qualified industrial parties interested in entering into a cooperative consortium research program on the development of new technology to develop, monitor and control polymer blends. Some of the topics to be discussed at the workshop are:

- (1) Strategies for Compatibilization of Polymer Blends;
- (2) Neutron Scattering of Polymers;

- (3) Miscibility of Saturated Hydrocarbon Polymer Blends;
- (4) Rheological and Mechanical Properties of Antiplasticized and Rubber Toughened Polycarbonates;
- (5) Fundamentals of Extrusion Compounding of Polymer Blends;
- (6) Ordering of Block Copolymers, and Polymer Blends Under Shear;
- (7) Phase Behavior of Polymer Blends Under Steady Shear Flow After Cessation of Flow; and
- (8) Measurement of NM-Range Domain Dimensions and Estimation of Stoichiometrics in Phase Separated Polymer Blends Using Solid-State Proton NMR.

Companies should be prepared to invest adequate resources in the collaboration and be firmly committed to the goal of developing new polymer technology.

This program is being undertaken within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502, 15 U.S.C. 3710a), which authorizes government owned and operated federal laboratories, including NIST, to enter into cooperative research and development agreements ("CRDAs") with qualified parties. Under the law, a CRDA may provide for contributions from the federal laboratory of personnel, facilities and equipment, but not direct funding. NIST intends to hold a planning meeting on April 20 and 21, 1992 for interested parties.

Dated: April 1, 1992.

John W. Lyons,

Director.

[FR Doc. 92-7987 Filed 4-7-92; 8:45 am]

BILLING CODE 3510-13-M

Malcolm Baldrige National Quality Award's Board of Overseers

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Tuesday, April 28, 1992, from 8:30 a.m. to 5 p.m. The Board of Overseers consists of seven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of the meeting on April 28, 1992, will be for the Board of Overseers to receive and then discuss reports from the National Institute of Standards and

Technology (NIST) and the Panel of Judges of the Malcolm Baldrige National Quality Award. These reports will cover the following topics: 8:30-10 a.m.—Introductions and overview of the Award process; 10 a.m.-11:45 a.m.—An update on the 1991 and 1992 Awards; 1:15 p.m.-2:30-5 p.m.—Roundtable discussions with the Panel of Judges of the Malcolm Baldrige National Quality Award and the Board of Overseers.

DATES: The meeting will convene April 28, 1992, at 8:30 a.m., and adjourn at 5 p.m. on April 28, 1992.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room (seating capacity 36, includes 24 participants), Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

Dated: April 2, 1992.

John Lyons,
Director.

[FR Doc. 92-8059 Filed 4-7-92; 8:45 am]
BILLING CODE 3510-13-M

Malcolm Baldrige National Quality Award's Panel of Judges

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award on Monday, April 27, 1992, and on Tuesday, April 28, 1992. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology.

The meeting will be composed of two parts. On April 27, the Panel of Judges will meet to review the Award processes (first stage, consensus, site visit, and final selection); hold final discussions on the 1991 Award cycle; prepare for the Panel's meeting on April 28 with the Board of Overseers of the Malcolm Baldrige National Quality Award on the 1992 Award status and plans; and discuss future plans for the Award program. This meeting will include a working lunch. On April 28, there will be a combined meeting of the members of the Panel of Judges and the Board of Overseers to review the Award

process, discuss the 1991 and 1992 Awards, and outline plans and issues for the 1992 and 1993 Award process.

DATES: The meeting will convene on April 27, 1992, at 8:30 a.m. and adjourn at 5 p.m. on April 28, 1992.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room (seating capacity 36, including 18 participants on April 27, and 24 participants on April 28, 1992), Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

Dated: April 2, 1992.

John Lyons,
Director.

[FR Doc. 92-8060 Filed 4-7-92; 8:45 am]
BILLING CODE 3510-13-M

[Docket No. 911178-1278]

Proposed Voluntary Product Standard TS234; Performance Standard for Wood-Based Structural-Use Panels

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of circulation of proposed voluntary product standard.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology is circulating for review and comment proposed Voluntary Product Standard TS234 "Performance Standard for Wood-Based Structural-Use Panels." This circulation is in accordance with the provisions of 10.6 of the Department of Commerce "Procedures for the Development of Voluntary Product Standards" (15 CFR part 10, as amended; (51 FR 22497 dated June 20, 1986)).

DATES: Written comments regarding the standard should be submitted to the Standards Management Program, Office of Standards Services, on or before June 22, 1992.

ADDRESSES: Copies of this proposed standard may be obtained from the Standards Management Program, Office of Standards Services, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Barbara Meigs, NIST, telephone: 301-975-4023, FAX: 301-963-2871.

SUPPLEMENTARY INFORMATION: The purpose of this Voluntary Product Standard is to foster the mutual objective of the United States and

Canada with respect to the development and implementation of harmonized performance standards for wood-based structural-use panels. The standard covers performance requirements, adhesive bond durability, panel construction and workmanship, dimensions and tolerances, and marking and moisture content of structural-use panels. It relates to a variety of forms of structural panels including plywood, waferboard, oriented strand board, structural particleboard, and composite panels. This standard is intended to serve as a companion to Voluntary Product Standard PS 1-83 "Construction and Industrial Plywood."

Dated: April 1, 1992.

John W. Lyons,
Director.

[FR Doc. 92-7986 Filed 4-7-92; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, (NMFS) NOAA, Commerce.

ACTION: Notice of Public Meeting; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing to hear public testimony on Draft Amendment 3 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico, which includes a framework procedure modification providing that stock assessments, panel reports, and total allowable catch setting actions be done every two years, unless otherwise agreed upon by the Council and Regional Director.

DATES: Written comments must be received by May 4, 1992. See "SUPPLEMENTARY INFORMATION" for date, time, and location of the hearing.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 813-226-2815.

ADDRESSES: Written comments should be sent to Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609.

SUPPLEMENTARY INFORMATION: The public hearing will begin at 7 p.m., and adjourn at 10 p.m. local time, on Monday, April 6, 1992. The hearing will be held at the Royal d'Iberville Hotel, 1980 Beach Boulevard, U.S. Highway 90,

Biloxi, Mississippi, 39531 (telephone: 601-388-6610).

Dated: April 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries
Conservation and Management, National
Marine Fisheries Service.

[FR Doc. 92-8063 Filed 4-3-92; 12:31 pm]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

April 2, 1992.

AGENCY: Committee for the
Implementation of Textile Agreements
(CITA).

ACTION: Issuing a directive to the
Commissioner of Customs reducing a
limit.

EFFECTIVE DATE: April 9, 1992.

FOR FURTHER INFORMATION CONTACT:
Kim-Bang Nguyen, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,
(202) 377-4212. For information on the
quota status of this limit, refer to the
Quota Status Reports posted on the
bulletin boards of each Customs port or
call (202) 535-8735. For information on
embargoes and quota re-openings, call
(202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March
3, 1972, as amended; section 204 of the
Agricultural Act of 1956, as amended (7
U.S.C. 1854).

The current limit for Categories 359-
C/659-C is being reduced to account for
carryforward used during the previous
agreement period.

A description of the textile and
apparel categories in terms of HTS
numbers is available in the
CORRELATION: Textile and Apparel
Categories with the Harmonized Tariff
Schedule of the United States (see
Federal Register notice 56 FR 60101,
published on November 27, 1991). Also
see 57 FR 2712, published on January 23,
1992.

The letter to the Commissioner of
Customs and the actions taken pursuant
to it are not designed to implement all of
the provisions of the bilateral
agreement, but are designed to assist

only in the implementation of certain of
its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation
of Textile Agreements.

Committee for the Implementation of Textile
Agreements

April 2, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229.

Dear Commissioner: This directive amends,
but does not cancel, the directive issued to
you on January 14, 1992, by the Chairman,
Committee for the Implementation of Textile
Agreements. That directive concerns imports
of certain cotton, wool and man-made fiber
textiles and textile products and silk blend
and other vegetable fiber apparel, produced
or manufactured in the Philippines and
exported during the twelve-month period
which began on January 1, 1992 and extends
through December 31, 1992.

Effective on April 9, 1992, you are directed
to amend the January 14, 1992 directive to
reduce the limit for Categories 359-C/659-C¹
to 600,000 kilograms², as provided under the
terms of the current bilateral textile
agreement between the Governments of the
United States and the Philippines.

The Committee for the Implementation of
Textile Agreements has determined that this
action falls within the foreign affairs
exception to the rulemaking provisions of 5
U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation
of Textile Agreements.

[FR Doc. 92-8007 Filed 4-7-92; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

April 2, 1992.

AGENCY: Committee for the
Implementation of Textile Agreements
(CITA).

ACTION: Issuing a directive to the
Commissioner of Customs increasing
limits.

EFFECTIVE DATE: April 9, 1992.

FOR FURTHER INFORMATION CONTACT:
Naomi Freeman, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,

¹ The limit has not been adjusted to account for
any imports exported after December 31, 1991.

² Category 359-C: only HTS numbers 6103.42.2025,
6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048,
6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010,
6211.32.0010, 6211.32.0025 and 6211.42.0010; Category
659-C: only HTS numbers 6103.23.0055, 6103.43.2020,
6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020,
6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044,
6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010,
6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015,
6211.33.0010, 6211.33.0017 and 6211.43.0010.

(202) 377-4212. For information on the
quota status of these limits, refer to the
Quota Status Reports posted on the
bulletin boards of each Customs port or
call (202) 566-5810. For information on
embargoes and quota re-openings, call
(202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March
3, 1972, as amended; section 204 of the
Agricultural Act of 1956, as amended (7
U.S.C. 1854).

The Government of the United States
agreed to convert the current designated
consultation levels for Categories 442
and 448 to specific limits at amended
levels.

A description of the textile and
apparel categories in terms of HTS
numbers is available in the
CORRELATION: Textile and Apparel
Categories with the Harmonized Tariff
Schedule of the United States (see
Federal Register notice 56 FR 60101,
published on November 27, 1991). Also
see 56 FR 63499, published on December
4, 1991.

The letter to the Commissioner of
Customs and the actions taken pursuant
to it are not designed to implement all of
the provisions of the bilateral
agreement, but are designed to assist
only in the implementation of certain of
its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation
of Textile Agreements.

Committee for the Implementation of Textile
Agreements

April 2, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229.

Dear Commissioner: This directive amends,
but does not cancel, the directive issued to
you on November 27, 1991, by the Chairman,
Committee for the Implementation of Textile
Agreements. That directive concerns imports
of certain cotton, wool, man-made fiber, silk
blend and other vegetable fiber textiles and
textile products, produced or manufactured in
Romania and exported during the twelve-
month period which began on January 1, 1992
and extends through December 31, 1992.

Effective on April 9, 1992, you are directed
to amend the directive dated November 27,
1991 to increase the limits for the following
categories:

| Category | Adjusted twelve-month limit ¹ |
|------------------------|---------------------------------------------|
| Sublevels in Group III | |
| 442..... | 9,626 dozen. |
| 448..... | 8,200 dozen. |

¹ The limits have not been adjusted to account for
any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-8006 Filed 4-7-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for 16 April 1992 at 10 a.m. in the Commission's offices in the Pension building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, March 30, 1992.

Charles H. Atherton,
Secretary.

[FR Doc. 92-8041 Filed 4-7-92; 8:45 am]

BILLING CODE 6330-01-M

COMMODITY FUTURES TRADING COMMISSION

Regulatory Coordination Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, section 10(a) and 41 CFR 101-6.1015(b), that the Commodity Futures Trading Commission's Regulatory Coordination Advisory Committee will conduct a public meeting in the new Hearing Room at the Commission's Washington, DC headquarters located at level B-1, 2033 K Street, NW., Washington, DC 20581, on Wednesday, April 22, 1992, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

AGENDA

1. Report on Risk-Based Capital from the Working Group on International Competitiveness and CFTC Staff.
2. Report from the Working Group on Clearance and Settlement regarding netting opportunities across domestic markets.

3. Reports from CFTC staff on earlier initiatives:

- a. Large Trader Reporting.
- b. Allocation of Trades and the Average Price System Proposal.
- c. Risk Disclosure.
4. Excellence 2000.
5. Follow-Up on issues discussed at earlier Committee meetings.
6. Other issues for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on the agenda matters listed above. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on ways to improve coordination and to facilitate cross market transactions, including cross border transactions. The purposes and objectives of the Advisory Committee are more fully set forth in the April 16, 1990 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Chairman Wendy L. Gramm, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commission Regulatory Coordination Advisory Committee, c/o Ms. Kate Hathaway or Mr. Robert Zwirb, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before this meeting. Members of the public who wish to make oral statements should inform Ms. Hathaway or Mr. Zwirb in writing at the foregoing address at least three business days before this meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued in the Commission in Washington, DC, on April 6, 1992.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-8276 Filed 4-7-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Open Meeting

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice of open meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-462) announcement is made of the following committee meeting:

NAME OF THE COMMITTEE: Armed Forces Epidemiological Board, DOD.

DATE OF THE MEETING: 14-15 May 1992.

TIME: 0800-1600.

PLACE: Breezey Point Naval Air Station, Norfolk, Virginia.

PROPOSED AGENDA:

14 May 1992—Service preventive medicine reports, risk profiles for setting research priorities, occupational databases.

15 May 1992—Epidemiological investigations.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, VA 22041-3258.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-8236 Filed 4-7-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 21-22 April 1992.

Time: 0800-1700 hours daily.

Place: Ft Monroe, Virginia.

Agenda: Members of the 1992 ASB Summer Study, "C2 on the Move" will meet to continue work on the study. The purpose of this Classified meeting is directed to interviews with commanders who participated in Desert Storm and Just Cause, in-brief with the Commander of TRADOC, and discussions concerning on-going efforts to improve shortfalls in the near term C2OTM requirements. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-8122 Filed 4-3-92; 4:43 pm]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Pub. Law. 92-463, announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 20 April 1992.

Time: 0900-1600 hours.

Place: Pentagon, Washington, DC.

The Army Science Board Systems Issue Group on Liquid Propellant Advanced Field Artillery System Follow-on will meet with government and contractor representatives to discuss results of the test firings at Yuma Proving Grounds, review pressure oscillation analysis, and discuss the latest design of the Regenerative Liquid Propellant Gun. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) and (4) thereof, and title 5, U.S.C., appendix, 2, subsection 10(d). The classified, proprietary, and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781-0782.

Sally A. Warner

Administrative Officer, Army Science Board.

[FR Doc. 92-8125 Filed 4-3-92; 4:43 pm]

BILLING CODE 3710-08-M

Introduction of New Letter of Intent (LOI) Form

AGENCY: Military Traffic Management Command, Department of the Army, DOD.

SUMMARY: This is to inform all Department of Defense (DOD)-approved domestic and international household goods and unaccompanied baggage carriers of the introduction of a new Letter of Intent form by the Military Traffic Management Command (MTMC), Directorate of Personal Property (MTPP). This form will be implemented on May 1, 1992, and will be used for all new LOIs and for replacement of existing LOIs, whenever corrections or updates are required. All LOIs currently on file need not be replaced until an update is necessary.

This form has been developed with automation in mind. It may be entered into your computer for ease of changing information, which will be helpful when replacing LOIs at installations. If you enter it into your computer, it must contain all the data provided in the form, in the exact format.

MTMC will issue copies and instructions to DOD-approved carriers.

FOR FURTHER INFORMATION CONTACT: Ms. Rosmarie F. Guzzardo or Ms. Sylvia Walker at (703) 756-1190.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-7983 Filed 4-7-92; 8:45 am]

BILLING CODE 3710-08-M

Directorate of Personnel Property Performance

AGENCY: Military Traffic Management Command, Department of the Army, DOD.

ACTION: Notice, Directorate of Personnel Property Performance Bond Policy.

SUMMARY: The Military Traffic Management Command's (MTMC) qualification standard for carriers to participate in the international movement of household goods and unaccompanied baggage shipment services includes a requirement that a carrier place a continuous performance bond on file with MTMC. The minimum amount of the bond is currently \$100,000 or 2.5 percent of the carrier's gross annual revenue derived from the preceding year's Department of Defense (DOD) international shipments, whichever is more. The purpose of the performance bond requirement is to protect the DOD's interests against shipments becoming frustrated or delayed prior to delivery to the member. The bond requirement is set forth in DOD 4500.34-R, dated October 19, 1991, appendix A, paragraph 1B.11.

Recently, requests have been received from carriers to release performance bonds on file with MTMC. Therefore, MTMC intends to implement the following procedures for releasing a carrier's performance bond. Carriers wishing to have their performance bond released by MTMC must conform to the conditions and policies prescribed below:

1. Release of Performance Bond Policy—General

a. Carriers must submit a written request to Headquarters, Military Traffic Management Command (HQMTMC), Directorate of Personnel Property, Rate Acquisition Division (MTPP-CA), for the return of either performance bond type listed below. The request must provide a reason why the bond needs to be returned and be accompanied by a listing of shipments which are in the carrier's possession or control. Any shipment not delivered to the member or member's designated agent is considered to be in the carrier's possession or control. If no shipments

are in the carrier's possession or control, the request must so state.

b. It is MTMC's policy performance bonds will not be released until all shipment services and final delivery to the member have been completed. This constitutes final performance by the carrier. Shipments in storage-in-transit (SIT) at the destination are considered in-transit and do not meet the final delivery or complete performance standard stated above. The following policies apply for the release of bonds based on the type of bond the carrier has on file.

c. This policy applies to active carriers (DOD-approved) and inactive carriers (carriers in a nonuse status, disqualified, but retaining DOD approval; and carries voluntarily withdrawn from the program, but who have agreed to onward movement of shipments to final destination).

2. Annual Performance Bond Release Procedures**a. Active Carriers**

(1) Carriers wishing return of the last Annual Performance Bond may have the bond returned to them (or their surety company, at their request) only if all shipments have been delivered to the member. Shipments in the pipeline and/or in SIT will remain subject to coverage under the bond until delivery is complete.

(2) If there are still undelivered shipments or shipments in SIT, the carrier may obtain a rider from its surety company to apply those shipments to the continuous performance bond on file with MTMC, changing the effective date of the continuous bond to the pickup date of the oldest undelivered shipment. After the rider is attached to the continuous bond, the Annual Performance Bond may be returned to the carrier (or surety company).

(3) For shipments in the pipeline or SIT, the carrier must submit a list of all shipments to include Government Bill of Lading number, member's name, rank, Social Security Number, pickup date of shipment, responsible destination personal property shipping office, and status.

b. Inactive Carriers

(1) Paragraphs a.(1)-(3) apply.

(2) If the carrier does not have a continuous bond on file, the value of the Annual Performance Bond may be reduced to cover the costs of delivering outstanding shipments. A reduction in the bond's value must be agreed to by the carrier and surety. Based on the

listing of outstanding shipments, MTMC will determine a dollar value of the new bond. In this case, a rider from the surety company must be affixed to the bond. The bond will remain a part of the carrier's file until all shipments are delivered.

3. Continuous Performance Bond Release Procedures

a. Active Carriers (DOD-Approved Carriers)

Carriers wishing return of the continuous performance bond may have the bond returned to them (or their surety company, at their request) only if all shipments have been delivered to the service members. Shipments in the pipeline and/or in SIT will remain subject to coverage under the bond until delivery is complete.

b. Inactive Carriers (DOD-Approved Carriers in Nonuse Status; Disqualified, but Retain DOD Approval; Voluntarily Withdrawn From the Program but Agreed to Onward Movement of Shipments to Final Destination)

MTMC will consider reducing the value of the bond to cover the costs of delivering outstanding shipments. A reduction in the bond's value must be agreed to by the carrier and surety. In this case, a rider from the surety company must be affixed to the bond.

For shipments in the pipeline or SIT, the carrier must submit a list of all shipments to include Government Bill of Lading number, member's name, rank, Social Security Number, pickup date of shipment, responsible destination personal property shipping office, and status.

The bond will remain a part of the carrier's file until all shipments are delivered.

DATES: Comments are requested by May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemarie F. Guzzardo or Ms. Sylvia Walker at (703) 756-1190.

ADDRESSES: Send comments to: Headquarters, Military Traffic Management Command, Attn: MTPP-CA (Ms. Guzzardo or Ms. Walker), room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 92-7984 Filed 4-7-92; 8:45 am]

BILLING CODE 3710-08-M

Availability of Patent Licenses

AGENCY: U.S. Army Laboratory Command, Department of the Army, DOD.

ACTION: Notice of Availability for non-exclusive, exclusive, or partially exclusive licensing of U.S. Patents concerning Spread Spectrum Multiplexed Noise Codes.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Numbers:

| | | |
|-----------|-----------|-----------|
| 3,947,674 | 4,431,999 | 4,527,276 |
| 3,955,197 | 4,434,505 | 4,529,963 |
| 4,027,264 | 4,455,882 | 4,580,141 |
| 4,032,884 | 4,457,007 | 4,617,570 |
| 4,245,328 | 4,460,992 | 4,638,318 |
| 4,275,397 | 4,498,083 | |
| 4,361,886 | 4,500,883 | |

for licensing. These patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anerson, United States Army Communications-Electronics Command, Attn: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000, (908) 532-4112.

SUPPLEMENTARY INFORMATION: These patents concern spread spectrum multiplexed noise codes and methods to eliminate interference of the same. These codes are formed with mate code pairs which when orthogonally multiplexed, transmitted, and detected in a matched filter possess an impulse autocorrelation function, meaning they compress to a single impulse containing no sidelobes. Generally, the noise codes are comprised of binary digital noise codes which compress to a code bit width of 1.

By utilizing these multiplexed noise codes, simplex and duplex wireless data transmission may be accomplished with no interference. Further, these codes may be used in multiple access communication systems wherein each user may be assigned a different unique noise code pair consisting of code mate pairs that are selected from a subset of multiplexed noise codes whose cross-correlation function value is equal to zero at a time when all the code mate pairs compress to a single impulse with no sidelobes. Therefore, several million users may exist in any one local transmission area.

Nulling and lobeless antenna arrays are also covered.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99-502) and section 207 of title 35, United States Code, the Department of the Army as represented by the United States Army Communications-Electronics Command wishes to license the above-mentioned United States Patents in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing and selling

devices covered by the above-mentioned patents.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 92-7904 Filed 4-7-92; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Transmittal of Monitored Retrievable Storage (MRS) Facility Annotated Outline Skeleton Text for the Preparation of a License Application to U.S. Nuclear Regulatory Commission (NRC)

AGENCY: Department of Energy.
ACTION: Notice

SUMMARY: The Department of Energy (DOE) transmitted the MRS Annotated Outline Skeleton Text for the Preparation of a License Application to the NRC for information and guidance on March 31, 1992. The annotated outline process will be the basis for developing a license application, if any, for the MRS program. The annotated outline process will be iterative, with revisions to be developed in consultation with the NRC.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the annotated outline, contact Priscilla Bunton, RW-331, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8365.

Issued in Washington, DC, on April 2, 1992.

John W. Bartlett,
Director, Office of Civilian Radioactive Waste Management.
[FR Doc. 92-8079 Filed 4-7-92; 8:45 am]
BILLING CODE 6450-01-M

Amendment to Solicitation Number DE-PS01-91RW00231 Entitled Assess the Feasibility of Siting a Monitored Retrievable Storage (MRS) Facility.

AGENCY: U.S. Department of Energy.
ACTION: Amended notice of availability.

SUMMARY: On June 5, 1991, the Department of Energy published a notice of availability of a restricted eligibility solicitation for conduct of feasibility studies for the siting of a Monitored Retrievable Storage (MRS) facility. 56 FR 25674.

On August 30, 1991, the Department of Energy published an amendment to the restricted eligibility solicitation. 56 FR 43008.

On December 31, 1991, The Department of Energy published a

second amendment to the restricted eligibility solicitation 56 FR 67604. A third amendment was issued on December 31, 1991.

The Department of Energy hereby announces a fourth amendment to the restricted eligibility solicitation extending the closing dates for Phase 1 and Phase 2 grant applications. The solicitation is now available inviting the submission by eligible States, Indian tribes, and affected units of local government of applications for financial assistance. Executive Order 12372, Intergovernmental Review of Federal Programs, as implemented by 10 CFR 1005, applies to this program.

Those who have previously requested copies of the solicitation will be sent copies of the amendment to the solicitation. Requests for copies of the solicitation and amendments must be in writing to the address shown below.

DATES: This amendment extends the closing date to June 30, 1992 for Phase 1 grants and September 30, 1992 for Phase 2 grants.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Mr. Nick Graham, PR-322.1, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,
Director, Operations Division "B" Office of
Placement and Administration.

[FR Doc. 92-8078 Filed 4-7-92; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Cooperative Agreement)

AGENCY: DOE, Rocky Flats Office.

ACTION: Notice of acceptance of an unsolicited financial assistance application for a cooperative agreement award.

SUMMARY: Based on a determination made in accordance with 10 CFR 600.14, the Department of Energy (DOE), Rocky Flats Office (RFO), gives notice of its plan to enter into a Cooperative Agreement with the American Welding Society (AWS), Miami, Florida. DOE will be assisted in implementing this Agreement by EG&G, Rocky Flats, Inc. The pending award is in response to an unsolicited application submitted by AWS for the purpose of establishing a national Precision Joining Center (PJC) in support of the Technology Commercialization Initiative authorized by DOE Defense Programs, Technology Transfer Division.

The PJC will be established in the metro Denver area, and off-site instruction will also be provided at

manufacturing plants. This venture will teach advanced precision joining techniques to welding technicians from U.S. manufacturing companies and U.S. government agency facilities and disseminate DOE Nuclear Weapons Complex joining technology to public and private sectors through direct transfer and collaborative development.

DOE will provide funding of approximately \$2.2 million over a 3-year period. Cost sharing by AWS, consignment of equipment from industries, and student tuition will provide the balance of resources required. It is anticipated that student tuition and/or alternative funding will enable the Center to become self-sufficient within 3 years.

FOR FURTHER INFORMATION CONTACT: Dorothy Gross, Contract Specialist, U.S. DOE, Rocky Flats Office, Contracts and Services Division, P.O. Box 928, Golden, CO 80402-0928, (303) 966-7201.

Issued at Golden, Colorado, March 23, 1992.

A.H. Pauole,
Deputy Manager, Rocky Flats Office.

Justification for Acceptance of an Unsolicited Proposal

Recipient: American Welding Society.
Financial Assistance Instrument:
Cooperative Agreement No. DE-
FC34-92RFO0374.

Title: Precision Joining Center.

Value/Time: Funds totaling \$2,217,000 to be awarded over a 3-year period beginning FY92.

Funding Source: DOE Defense Programs Technology Transfer Division (DP-4.1).

It is recommended that the unsolicited application for federal financial assistance which was submitted by the American Welding Society on February 7, 1992, be accepted for support pursuant to the general evaluation provisions of the DOE Financial Assistance Rules, 10 CFR 600.14.

Scope of Work

The Precision Joining Center (PJC), to be established in the Denver metro area, will be a cooperative effort between DOE and the American Welding Society (AWS). DOE will be assisted by EG&G/Rocky Flats, Inc. The program will train and certify welding technicians in precision joining techniques and disseminate DOE Nuclear Weapons Complex (NWC) joining technology. Trainees will be U.S. industry and government agency personnel who have completed vocational/technical training in the joining area and/or have a significant amount of appropriate joining experience. The PJC is a separate

component of the DOE Defense Programs Technology Commercialization Initiative. The Technical Task Plan constitutes the detailed plan for implementation. \$1.5 million has been budgeted for this project in the current fiscal year.

Overall Merit

The advanced training offered by the PJC will benefit both the NWC and U.S. industry by providing a conduit for information transfer and infusion of new ideas to stimulate the development of advancements in joining technologies. Since the PJC will be equipped with consigned state-of-the-art machines, participants will have the ability to evaluate recently developed joining equipment prior to incorporation into plans for future processes. The resultant trained and certified body of personnel is needed to remain competitive in the global marketplace of manufacturing technology. An example of this need is reflected in the recent European Economic Community (EEC) plan to require companies exporting welded products to EEC countries to have certified welding personnel on their staff.

Objectives and Probability of Achievement

The objectives of the PJC are: (1) To teach advanced precision joining techniques to joining technicians from U.S. manufacturing companies and U.S. government agency facilities, (2) to transfer DOE/NWC joining technology to the public and private sectors, and (3) to enhance cooperative development of new precision joining technologies.

The potential for achieving all objectives through support provided by the Cooperative Agreement is high. U.S. industry recognizes the need for more skilled joining technicians. The NWC is considered by some authorities to possess precision joining capabilities which are unequaled. EG&G/RF can provide an interface with close relation to a production environment and a good understanding of industrial needs. AWS supplements these attributes with their own well-established relationship with the joining industry and their special qualifications described below.

Special Techniques Available From AWS

AWS has the unique domestic capability to administer the PJC because it is the only organization associated with welding and joining technology that currently provides recognized operator certification. In addition, AWS is the only organization with the

following combination of necessary attributes:

AWS is organized with a major emphasis on education. This provides the PJC with the experience and infrastructure to present training courses at customer facilities/industrial plants.

AWS has non-profit, 501(c)(3), status, ensuring the most efficient utilization of federal funds.

AWS provides the most extensive communication network in the welding and joining industry. The AWS Welding Journal is received by approximately 45,000 technical personnel, and the presence of AWS provides instant recognition to the PJC within the welding and joining industry.

Qualification of Key Personnel

The achievement of the project objectives is based on the commitment of AWS, DOE, and EG&G/RF. No key personnel have been identified.

Determination

Based on the evaluation of the unsolicited proposal as set forth above, it is determined that the proposed project for achievement of the DOE enhanced technology transfer initiative is meritorious and represents an innovative approach which is not eligible for financial assistance under current or planned solicitations.

Dated: March 13, 1992.

Prepared by:

Robert R. Reese,

Chief, Weapons Programs/Manufacturing Management Branch, Project Officer.

Recommend Approval:

Dated: February 21, 1992.

Jerri J. Adams,

Director, Contracts and Services Division, Contracting Officer.

Approved:

Dated: March 20, 1992.

A.H. Pauole,

Deputy Manager, Rocky Flats Office.

[FR Doc. 92-8080 Filed 4-7-92; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance Award to the Pacific Gas and Electric Co.

AGENCY: Department of Energy, Albuquerque Field Office.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) Albuquerque Field Office (AL) in accordance with 10 CFR 800.7(b)(2), gives notice of its plans for award of a cooperative agreement to the Pacific Gas and Electric Company (PG&E),

Research and Development Department, San Ramon, California, on a noncompetitive basis. This agreement supports Phase 2 of the Photovoltaics for Utility Scale Applications (PVUSA) Project, the objective of which is to bridge the gap between current photovoltaics (PV) research and development activities and the readiness of systems for broad utility application and to focus on the transfer of PV technology to U.S. utilities for commercial application.

SUPPLEMENTARY INFORMATION: The DOE has determined that restriction to the PG&E is appropriate based on the following information:

- The PVUSA Project supplements the work originally funded by the DOE as a result of an unsolicited application submitted by the PG&E in 1987. The PG&E has since coordinated the implementation of the project, contributing its own funds as well as soliciting additional resources from other utility companies and interested parties for the initial research activities on utility scale PV applications. The PG&E has expended over \$13 million for site preparation at its leased site at Davis, California and for installing photovoltaic systems currently used in the project.

- The PG&E and other utilities companies and interested third parties are cost sharing approximately 50 percent of the cost of the research project.

- Solicitation of a new participant would result in significant delays and increased costs as the new participant would require the acquisition of a site on which the project could be installed, site preparation, technology transfer, hardware testing, and the recruitment of other interested parties to contribute resources toward this project. Utilities companies currently participating in the research may also withdraw from the project because of lack of confidence in a new participant or doubt about the project's timely completion.

The total estimated project cost for this five-year cooperative agreement is \$23,280,000, of which the anticipated project cost to the Government is \$11,640,000. The distribution and availability of funds is subject to budget limitations, adequate competition and satisfactory proposals from potential subcontractors, and results of research under the cooperative agreement, and may deviate from the above projection.

FOR FURTHER INFORMATION CONTACT: Susan L. Connor, Contracting Officer, U.S. Department of Energy Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque,

NM 87185-5400. Telephone: (505) 845-4345 or FTS 845-4345.

Issued in Albuquerque, NM, March 18, 1992.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 92-8076 Filed 4-7-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 2519-003, et al.]

Hydroelectric Applications, Central Maine Power Co.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New Major License.

b. *Projects Nos.:* 2519-003.

c. *Date Filed:* November 13, 1991.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project:* North Gorham Project.

f. *Location:* On the Presumpscot River in Cumberland County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623-3521.

i. *FERC Contact:* Robert Bell (dt) (202) 219-2806.

j. *Comment Date:* May 7, 1992.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: The existing project consist of:

(1) A stone masonry and concrete dam about 1,009 feet long, having from west to east, (a) a non-overflow masonry wall section about 600.5 feet long; (b) an intake section about 51.5 feet long and 28 feet high with four gates 9.5 feet wide by 9.5 feet high, protected by trashracks; (c) a sluice gate section about 47 feet long with four submerged gates 4 feet wide by 5 feet high; (d) a spillway section about 256.5 feet long; (e) a sluice section about 15.5 feet long; and (f) a cutoff wall section about 38 feet long;

(2) An impoundment with gross storage capacity of about 1,300 acre-feet at elevation 221.8 feet msl;

(3) Four 8 feet diameter steel penstocks extending approximately 50

to 70 feet downstream to two surge chambers;

(4) Two surge chambers;

(5) A brick powerhouse about 58 feet wide and 71 feet long with two generating units each 1,125-kW of capacity;

(6) A tailrace;

(7) A transformer house;

(8) A switch house; and

(9) Appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Central Maine Power Company 34 Anthony Avenue, Augusta, ME 04330 (207) 623-3521.

2a. *Type of Application:* Amendment of License.

b. *Project No:* 2809-008.

c. *Date Filed:* January 6, 1992.

d. *Applicant:* Consolidated Hydro Maine, Inc.

e. *Name of Project:* American Tissue.

f. *Location:* On the Cobbosseecontee Stream, within the Town of Gardiner, Kennebec County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Wayne E. Nelson, Director, Environmental Affairs, Consolidated Hydro Maine, Inc., R.R. #2, Box 690H, Industrial Avenue, Sanford, ME 04073, (207) 490-1980.

i. *FERC Contact:* Paul Shannon, (202) 219-2866.

j. *Comment Date:* May 4, 1992.

k. *Description of Amendment:* Consolidated Hydro Maine, Inc. proposes to amend the project description and exhibits K and L of their license to show the inclusion of one-foot-high flashboards on the spillway crest of the dam. The flashboards were installed in 1987 to obtain the 24 feet of head at the dam authorized in the Order Issuing License, 7 FERC ¶ 61,146, issued May 9, 1979.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

3a. *Type of Application:* Amendment of License.

b. *Project No:* 8396-015.

c. *Date Filed:* November 29, 1991.

d. *Applicant:* Great Bear Hydropower, Inc.

e. *Name of Project:* Columbia Project.

f. *Location:* On the Paulins Kill in Knowlton Township, Warren County, New Jersey.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Terence McDonnell, Great Bear Hydropower, Inc., 43 Angelus Drive, Greenwich, CT 06831, (203) 531-8704.

i. *FERC Contact:* Paul Shannon, (202) 219-2866.

j. *Comment Date:* May 4, 1992.

k. *Description of Amendment:* Great Bear Hydropower, Inc. proposes to delete the two-foot-high flashboards from the project description of the Order Issuing License, 34 FERC ¶ 62, 136, issued January 15, 1988. The licensee decided it would not be economically beneficial to install the flashboards to the crest of the Columbia Dam at this time.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

4a. *Type of Application:* Amendment of License.

b. *Project No:* 9310-011.

c. *Date Filed:* December 20, 1991.

d. *Applicant:* City of Mt. Pleasant, Utah.

e. *Name of Project:* Pleasant Creek Canyon Project.

f. *Location:* On Pleasant Creek and its tributaries in Sanpete County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Alden Robinson, P.E., Sunrise Engineering, Inc., 71 West Center Street, Fillmore, UT 84631, (801) 743-6151.

i. *FERC Contact:* Paul Shannon, (202) 219-2866.

j. *Comment Date:* May 4, 1992.

k. *Description of Amendment:* The licensee proposes to construct the Pressure Reducing Station Power Plant as a base load, run-of-river plant. The plant will have an installed generating capacity of 225-kW and a hydraulic capacity of 18 cfs. The plant was originally licensed to be a 600-kW, peaking plant with a hydraulic capacity of 21 cfs. The original plant would not have been used during the irrigation season.

The proposed plant will operate year-round. During the winter months it will utilize the available creek flow. However, during the irrigation season, the unit will be on-line in the irrigation system instead of the existing Pressure Reducing Station. The licensee states that the unit is specially designed to pass flows to irrigation users at current

pressure levels, so as not to interfere with irrigation rights.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

5a. *Type of Application:* Preliminary Permit.

b. *Project No:* 11254-000.

c. *Date filed:* February 18, 1992.

d. *Applicant:* Lewis Basin Limited Partnership.

e. *Name of Project:* Siouxi Creek Hydroelectric Project.

f. *Location:* On Siouxi Creek and North Siouxi Creek near the town of Chelatchie in Clark County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Michael S. Wright, Permit/Engineering, Inc., 1300-114th Ave., SE., suite 220, Bellevue, Washington 98004, (206) 451-7471.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219-2827.

j. *Comment Date:* May 7, 1992.

k. *Description of Project:* The proposed project would consist of:

(1) An intake structure and 60-foot-high diversion structure on Siouxi Creek;

(2) A 10-foot-diameter, 9,300-foot-long tunnel connecting this diversion structure with a powerhouse;

(3) An intake structure and 80-foot-high diversion structure on North Siouxi Creek;

(4) A 5-foot-diameter, 3,000-foot-long penstock connecting this diversion structure with the tunnel;

(5) A powerhouse with a total installed generating capacity of 9,000kW;

(6) A 3.5-mile-long transmission line interconnecting with an existing transmission line near Yale Dam;

(7) 5,000 feet of access road; and

(8) Appurtenant facilities.

No new roads will be needed to conduct the studies. The approximate cost of the studies would be \$350,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

6a. *Type of Application:* Preliminary Permit.

b. *Project Nos.:* 11255-000 through 11258-000.

c. *Date filed:* February 18, 1992.

d. *Applicant:* Lewis Basin Limited Partnership.

e. *Name of Projects:* Curly Creek Project No. 11255-000, Rush Creek Project No. 11256-000, Big Creek Project No. 11257-000, Tillicum Creek Project No. 11258-000.

f. *Location:* All four projects are located within Gifford Pinchot National

Forest in Skamania County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Michael S. Wright, Permit/Engineering, Inc., 1300—114th Ave., SE, suite 220, Bellevue, Washington 98004, (206) 451-7371.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219-2827.

j. *Comment Date:* May 6, 1992.

k. *Description of Project:* The proposed Curly Creek project would consist of: (1) An intake structure and 80-foot-high diversion structure on Curly Creek; (2) a 4-foot-diameter, 18,000-foot-long penstock; (3) a powerhouse with a total installed generating capacity of 8,500 kW; (4) a 15-mile-long transmission line interconnecting with an existing transmission line near Swift Dam; (5) a 2,500-foot-long access road; and (6) appurtenant facilities. The project would be located in sections 2 and 3 of T6N, R7E, and sections 29, 32, 33, 34, and 35 of T7N, R7E.

The proposed Rush Creek project would consist of: (1) An intake structure and 13-foot-high diversion structure on Rush Creek; (2) a 100-foot-diameter, 10,000-foot-long tunnel; (3) a powerhouse with a total installed generating capacity of 19,500 kW; (4) a 20-mile-long transmission line interconnecting with an existing transmission line near Swift Dam; (5) a 2,100-foot-long access road; and (6) appurtenant facilities. The project would be located in sections 22, 26, 27, and 36 of T7N, R7E.

The proposed Big Creek project would consist of: (1) An intake structure and 13-foot-high diversion structure on Big Creek; (2) a 45-inch-diameter, 11,000-foot-long penstock; (3) a powerhouse with a total installed generating capacity of 9,300 kW; (4) a 23-mile-long transmission line interconnecting with an existing transmission line near Swift Dam; (5) 11,500 feet of access road; and (6) appurtenant facilities. The project would be located in sections 13, 14, and 23 of T7N, R7E.

The proposed Tillicum Creek project would consist of: (1) An intake structure and 13-foot-high diversion structure on Tillicum Creek; (2) a 40-inch-diameter, 11,000-foot-long penstock; (3) a powerhouse with a total installed generating capacity of 4,500 kW; (4) a 27-mile-long transmission line interconnecting with an existing transmission line near Swift Dam; (5) a 1,200-foot-long access road; and (6) appurtenant facilities. The project would be located in sections 16, 17, 21, and 22 of T8N, R8E.

No new access roads will be needed to conduct the studies. The approximate cost of each study would be \$350,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7a. *Type of Application:* Preliminary Permit.

b. *Project Nos.:* 11259-000.

c. *Date filed:* February 18, 1992.

d. *Applicant:* L. B. Industries, Inc.

e. *Name of Project:* Deep Creek Hydropower Project.

f. *Location:* On Deep Creek near the town of Buhl in Twin Falls County, Idaho. Sections 9, 10, 16, 17, and 20 in T9S, R14E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Carl L. Myers, P.E., Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, Idaho 83712, (208) 336-1425.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219-2827.

j. *Comment Date:* May 6, 1992.

k. *Description of Project:* The proposed project would consist of: (1) A 6-foot-high diversion structure on Deep Creek;

(2) A 4,000-foot-long canal;

(3) A 14,080-foot-long penstock;

(4) A powerhouse with a total installed capacity of 2,000 kW;

(5) A 1,700-foot-long transmission line interconnecting with an existing Idaho Power Company transmission line;

(6) A tailrace returning water to Deep Creek; and

(7) Appurtenant facilities.

No new roads will be needed to conduct the studies. The approximate cost of the studies would be \$120,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application

must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, including an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or

motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: April 2, 1992, Washington, DC.
Lois D. Cashell,
Secretary.
[FR Doc. 92-8000 Filed 4-7-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-45-000]

ANR Pipeline Co.; Informal Settlement Conference

April 1, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on April 10, 1992, after the Prehearing Conference which commences at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208-1602, or Michael D. Cotleur at (202) 208-1076.
Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-7998 Filed 4-7-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ92-3-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

April 1, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on March 30, 1992, tendered for filing the following revised tariff sheets listed to its FERC Gas Tariff, Original Volume No. 1:

Ninetyth Revised Sheet No. 3-A
Fourth Revised Sheet No. 3-A.1
Sixty-Seventh Revised Sheet No. 3-B
Fourteenth Revised Sheet No. 3-B.1

The proposed effective date of these tariff sheets is April 1, 1992.

Panhandle states that these tariff sheets contain revisions to Panhandle's PGA rates to reflect changes in the billing determinants in effect on the effective date of the instant filing. Panhandle's D-1 demand rate increases \$2.15 from the rates reflected in the motion filing in Docket No. RP91-229-000 to be effective April 1, 1992.

Panhandle further states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (Quarterly PGA Filing) of the Commission's Regulations and pursuant to § 18.4 (Purchased Gas Demand Rate Adjustments by Pipeline Suppliers) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional sales rates effective April 1, 1992.

Panhandle states that copies of its filing have been served on all jurisdictional sales customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 92-7997 Filed 4-7-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM92-9-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

April 1, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 30, 1992 certain revised tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff included in appendix A attached to the filing.

Transco states that the purpose of the filing is to track rate changes attributable to (1) storage services purchased from Consolidated Natural

Gas (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS and (2) transportation services purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT-NT. The tracking filing is being made pursuant to section 4 of Transco's Rate Schedule LSS and section 4 of Transco's Rate Schedule FT-NT.

Included in Appendices B and C attached to the filing are explanations and detailed computations regarding the proposed tracking changes under Rate Schedules LSS and FT-NT.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protests said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-7999 Filed 4-7-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of \$829,057.49, plus accrued interest, obtained by the DOE under the terms of two consent orders entered into with Richome Oil and Gas Company, Herrmann Energy, Jerome B. Herrmann, Richard P. Herrmann, Kevin Herrmann, and Stanley Herrmann (Case No. LEF-

0041) and Ball Marketing, Inc., Charles Goss, Baker R. Littlefield and Robert L. McAdams (Case No. LEF-0043). The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATES: Comments must be filed in duplicate on or before May 8, 1992 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case numbers LEF-0041 and LEF-0043.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute \$829,057.49 that has been remitted by Richome Oil and Gas Company, Herrmann Energy, Jerome B. Herrmann, Richard P. Herrmann, Kevin Herrmann, and Stanley Herrmann and Ball Marketing, Inc., Charles Goss, Baker R. Littlefield and Robert L. McAdams to the DOE. The DOE is currently holding the funds in an interest bearing account pending distribution.

The DOE has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products that they purchased and the extent to which they can demonstrate injury.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the

proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication in the *Federal Register*, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. through 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: April 1, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Proposed Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

April 1, 1992.

Names of Firms: Richome Oil and Gas Company, Herrmann Energy, Jerome B. Herrmann, Richard P. Herrmann, Kevin Herrmann, and Stanley Herrmann Ball Marketing, Inc., Charles Goss, Baker R. Littlefield and Robert L. McAdams.

Date of filings: February 20, 1992.

Case Numbers: LEF-0041, LEF-0043.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider two Petitions for Implementation of Special Refund Procedures filed by the ERA on February 20, 1992 for crude oil overcharge funds. The funds at issue in these Petitions were obtained from Richome Oil and Gas Company, Herrmann Energy, Jerome B. Herrmann, Richard P. Herrmann, Kevin Herrmann, and Stanley Herrmann (Richome) (Case No. LEF-0041) and Ball Marketing, Inc., Charles Goss, Baker R. Littlefield, and Robert L. McAdams (Ball) (Case No. LEF-0043). This Office issued a Remedial Order against Richome for violations of the crude oil price regulations during the period from November 27, 1973 through December 31, 1974. *Richome Oil and Gas Co. (a.k.a. Herrmann Energy)*, 21 DOE ¶ 83,003 (1991). On September 3, 1991, Richome entered into a Consent Order

with the DOE in which it agreed to pay \$30,343 in order to resolve the DOE's claim without the expense and inconvenience of further administrative or judicial proceedings. Richome paid the \$30,343 to the DOE on October 8, 1991. On November 24, 1984, the DOE issued a Proposed Remedial Order (PRO) which alleged that Ball Marketing, Inc. committed violations of the price regulations covering the sale of crude oil during period January 1, 1974 through March 31, 1978. Ball Marketing, Inc. filed a Statement of Objections to the PRO with the OHA on May 1, 1985. Ball Marketing, Inc. also filed a Motion to Join Charles Goss, Baker R. Littlefield, and Robert McAdams as parties to the proceeding. On April 7, 1987, the OHA issued a Decision and Order which granted Ball Marketing, Inc.'s Motion to Join. *Ball Marketing, Inc.*, 15 DOE ¶ 83,031 (1987). In October 1987, the DOE and Ball entered into a Consent Order which satisfied the DOE's claim against Ball. The Consent Order became effective on December 1, 1987. The DOE collected a total of \$798,714.49 from Ball in settlement of this matter.

In sum, Richome and Ball remitted a total of \$829,057.49 to the DOE. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute those funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received for Richome and Ball and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986) (the Stripper Well Agreement), provides that crude oil overcharge funds will be

divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the subpart V regulations. 52 FR 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, i.e., *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (NYP); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell*); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals (TECA). In the case *In re: The Department of Energy Stripper Well Exemption Litigation*, various states filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323-24.

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April notice to the crude oil subpart V proceeding that is the subject of the present determination. As noted above, an alleged crude oil violation amount of \$829,057.49, plus interest, is covered by this proposed Decision. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or \$165,811.49, plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g.*, *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. Generally, a covered product is any product that was covered by the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751-760, and was primarily produced at a crude oil refinery. *E.g.*, *Anchor Continental, Inc.*, 22 DOE ¶ 85,003 (1992). Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *E.g.*, *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893-96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *E.g.*, *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *E.g.*, NYP, 18 DOE at 88,701-03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to

the District Court in the Stripper Well Litigation, *reprinted in* 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Mid-America Dairyman, Inc. v. Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination (\$829,057.49) by the total consumption of petroleum products in the United States during the period of price control (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of \$0.0000004102 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *E.g., Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That previously filed application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. The DOE has established June 30, 1992 as the current deadline for filing an Application for Refund from the crude oil funds.

Quintana Energy Corp., 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims filed within this deadline at the rate of \$.0008 per gallon. However, while we anticipate that applicants that filed their claims within the original June 30, 1988 deadline will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. *E.g., Seneca Oil Co.*, 21 DOE ¶ 85,827 (1991). Notice of any additional amounts available in the future will be published in the Federal Register.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that eighty percent of the alleged crude oil violation amounts subject to this Proposed Decision, or \$663,246, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or

ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is therefore ordered that:

The refund amounts remitted to the Department of Energy by Richome Oil and Gas Company, Herrmann Energy, Jerome B. Herrmann, Richard P. Herrmann, Keven Herrmann, and Stanley Herrmann pursuant to the Consent Order finalized on September 3, 1991 and by Ball Marketing, Inc., Charles Goss, Baker R. Littlefield, and Robert L. McAdams pursuant to the Consent Order which became effective on December 1, 1987 will be distributed in accordance with the foregoing Decision.

[FR DOc. 92-8077 Filed 4-7-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS 51791; FRL 4058-7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 20 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-633, 92-634, June 6, 1992.

P 92-635, 92-636, 92-637, 92-638, 92-639, 92-640, 92-641, 92-642, June 7, 1992.

P 92-643, 92-644, 92-645, June 8, 1992.

P 92-646, 92-648, June 9, 1992.

P 92-649, 92-650, June 10, 1992.

P 92-657, June 9, 1992.

P 92-659, 92-660, June 13, 1992.

Written comments by:

P 92-633, 92-634, May 7, 1992.

P 92-635, 92-636, 92-637, 92-638, 92-639, 92-640, 92-641, 92-642, May 8, 1992.

P 92-643, 92-644, 92-645, May 9, 1992.

P 92-646, 92-648, May 10, 1992.

P 92-649, 92-650, May 11, 1992.

P 92-657, May 10, 1992.

P 92-659, 92-660, May 14, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51791)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. L-100, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-633

Manufacturer. Confidential.

Chemical. (S) Benzene, di-C₁₀₋₁₈-alkyl derivatives.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 92-634

Manufacturer. Confidential.

Chemical. (S) Benzenesulfonic acid, di-C₁₀₋₁₈-alkyl derivatives.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 92-635

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Acrylic salt.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 92-636

Manufacturer. Confidential.

Chemical. (G) Substituted ammonium salt.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 92-637

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Polymeric coating. Prod. range: Confidential.

P 92-638

Manufacturer. Arizona Chemical Company.

Chemical. (G) Phenolic modified rosin ester.

Use/Production. (S) Printing ink resin. Prod. range: Confidential.

P 92-639

Importer. Ciba-Geigy Polymers division.

Chemical. (C) 1,3-Isobenzofurandione, 3a, 4, 7, 7a-tetrahydro-, copolymer.

Use/Import. (S) Curing agent. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,170 mg/kg species (rat). Acute dermal toxicity: LD50 > 2-5 ml/kg species (rat). Eye irritation: severe species (rabbit). Skin irritation: moderate species (rabbit).

P 92-640

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Manufacturing additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat).

P 92-641

Importer. Hoechst Celanese Corporation.

Chemical. (S) Diethylene glycol; isonanoic acid 2,5-furandione.

Use/Import. (S) Binder in paste ink. Import range: 22,500-32,000 kg/yr.

P 92-642

Manufacturer. Eastman Chemical Company.

Chemical. (G) 1,4-butanediol; 1,4-benzenedicarboxylic acid dimethyl ester; 1,5-pentanedicarboxylic acid dimethyl ester.

Use/Production. (G) Barrier film. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: > 1,000 mg/kg species (guinea pig). Eye irritation: minimal species (rabbit). Skin irritation: slight species (guinea pig). Skin sensitization: negative species (guinea pig).

P 92-643

Importer. Confidential.

Chemical. (G) Styrene-2-ethylhexylacrylate copolymer.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 92-644

Importer. Ciba-Geigy Pigments Division.

Chemical. (G) Perrylene diimide.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit). Mutagenicity: negative. Skin sensitization: positive species (guinea pig).

P 92-645

Importer. Fle-USA Inc.

Chemical. (S) Glucitol polyacetate.

Use/Import. (S) Plasticizer. Import range: 50,000-150,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (guinea pig). Eye irritation: none species (rabbit). Mutagenicity: negative.

P 92-646

Importer. Confidential.

Chemical. (G) Hydroxy acrylic resin.

Use/Import. (G) Automotive refinish. Import range: Confidential.

P 92-648

Manufacturer. Keystone Applied Research, Inc.

Chemical. (G) Halo-amine.

Use/Production. (S) Halogen atom source for etching. Prod. range: 1,000-5,000 kg/yr.

P 92-649

Importer. Confidential.

Chemical. (G) Ammonium oleyl sulfosuccinate.

Use/Import. (G) Surfactant. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: > 2.0 g/kg species (rabbit). Skin irritation: slight species (rabbit). Mutagenicity: negative.

P 92-650

Importer. Charkit Chemical Corporation.

Chemical. (G) Potassium salt of an aromatic substituted pyrazole carboxylic acid.

Use/Import. (S) Photographic antihalation dye. Import range: 1,200-1,600 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit). Mutagenicity: negative.

P 92-657

Manufacturer. Confidential.

Chemical. (G) Urethane modified polyester.

Use/Production. (S) Binder for printing inks. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Eye irritation: minimal species (rabbit). Skin irritation: minimal species (rabbit).

P 92-659

Manufacturer. Grain Processing Corporation.

Chemical. (G) Starch, (2-hydroxypropyl)trimethylammonium chloride, ester, esterified.

Use/Production. (S) Papermaking additive. Prod. range: Confidential.

P 92-660

Importer. Confidential.

Chemical. (G) Acrylic epoxy.

Use/Import. (S) Raw material for graft polymer. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: moderate species (rabbit). Skin irritation: none species (rabbit).

Dated: April 2, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-8065 Filed 4-7-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Hugo Stinnes Schifffahrt GmbH et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-011371.

Title: DSR/Stinnes West Indies Services GmbH.

Parties:

Hugo Stinnes Schifffahrt GmbH, Deutsche Seereederei Rostock GmbH, DSR/Stinnes West Indies Services GmbH.

Synopsis: The proposed Agreement would establish a joint service in the trade between Mexico on the one hand and Puerto Rico on the other, and between Europe on the one hand and Puerto Rico and the United States Virgin Islands on the other. The parties have requested a shortened review period.

Agreement No.: 224-200251-001.

Title: Port of Seattle/Puget Sound Tug and Barge Co., Terminal Agreement.

Parties:

Port of Seattle,
Puget Sound Tug and Barge Co.

Synopsis: The subject modification reflects an adjustment in the rent payable to the port for the use of Pier 2 during the thirty-month period beginning December 1, 1991 and ending May 31, 1994.

Agreement No.: 224-200256-004.

Title: City of Long Beach/Hanjin Shipping Company, Ltd., Terminal Agreement.

Parties:

City of Long Beach,
Hanjin Shipping Company, Ltd.
("Hanjin").

Synopsis: The Agreement modification reflects an adjustment of rent payable by Hanjin for the period commencing March 1, 1991 and ending February 29, 1996.

Agreement No.: 224-200330-002.

Title: Port of New Orleans/Coastal Cargo Company, Inc.

Parties:

Port of New Orleans, Coastal
Company, Inc.

Synopsis: The proposed notice advises that the parties have agreed to extend the lease on a month to month basis.

Agreement No.: 224-200436-002.

Title: Port Authority of New York and New Jersey/Maher Terminal Company Terminal Agreement.

Parties:

The Port Authority of New York and
New Jersey,
Maher Terminals, Inc.

Synopsis: The amendment extends the terms of the lease between the parties until September 30, 1992.

Agreement No.: 224-200639.

Title: City of Long Beach/Maersk Terminal Agreement.

Parties:

City of Long Beach ("City") Maersk,
Inc. ("Maersk").

Synopsis: Under the terms of the Agreement, Maersk will lease approximately 107 acres adjacent to Berths 266 through 270 on Pier J located within the Harbor District of the City.

The Agreement has an initial term of ten years.

Agreement No.: 224-200640.

Title: Maryland Port Administration and Cargill, Inc., Lease Agreement.

Parties:

The Maryland Port Administration
("MPA"), Cargill, Inc. ("CARGILL").

Synopsis: The Agreement provides for CARGILL to use portions of the North Locust Point Marine Terminal at MPA for a term of ten years.

Dated: April 2, 1992.

By the Order of the Federal Maritime
Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-7994 Filed 4-7-92; 8:45 am]

BILLING CODE 6730-01-M

International Longshoremen's Association, AFL-CIO, et al.; Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on March 30, 1992, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 224-000083-007.

Title: International Longshoremen's Association Assessment Agreement.

Parties:

International Longshoremen's
Association, AFL-CIO ("ILA")
Carriers Container Council, Inc.
("Carrier")

Synopsis: The agreement amends the Carrier-ILA Container Freight Station Trust Fund basic assessment agreement to reflect the provisions and administration of a joint labor-management container royalty fund established for the purpose of collecting and distributing additional container royalties in ILA ports from Maine to Texas.

By Order of the Federal Maritime
Commission.

Dated: April 2, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-8008 Filed 4-7-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. 7100-0128]

Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final approval of, and interim approval of, agency forms.

BACKGROUND: Notice is hereby given of final approval by the Board of Governors of the Federal Reserve System of revisions to the Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of \$150 Million or More or With More Than One Subsidiary Bank (FR Y-9C; OMB No. 7100-0128) as well as two other bank holding company reports, under delegated authority from the Office of Management and Budget (OMB), as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).¹ The Board has considered the one public comment received and has determined that the changes as proposed, should become final.

In addition, notice is hereby given of interim approval of, and a request for public comment with respect to, changes made to the FR Y-9C report to parallel changes made to the commercial bank Reports of Condition and Income for the March 1992, reporting date.² These additional interim revisions are consistent with the Board's policy to maintain, to the extent possible, agreement between the bank holding company reports and the commercial bank reports. Bank holding companies have reported, in prior quarters, that the impact on reporting burden is lessened when parallel changes are made concurrently to the FR Y-9C bank holding company report and the Reports of Condition and Income. Based on the comments received from respondents to previous data collection notices, and the Board's policy of maintaining consistency between the two reports, the Board of Governors has given approval to make these additional changes to the bank holding company reports, on an interim basis, with

¹ The other reports being revised are the Parent Company Only Financial Statements for Bank Holding Companies With Total Consolidated Assets of \$150 Million or More, or With More Than One Subsidiary Bank (FR Y-9LP; OMB No. 7100-0128) and the Parent Company Only Financial Statements for One Bank Holding Companies with Total Consolidated Assets of Less Than \$150 Million (FR Y-9SP; OMB No. 7100-0128).

² One of the proposed items was added to the Report of Condition and Income at an earlier date.

opportunity for public comment. These revisions parallel changes to the Reports of Condition and Income approved for the first quarter and will help insure the consistency of the Federal Reserve's data collections and will be more convenient for respondents.

All changes to the reporting requirements for bank holding companies are to be effective with the March 31, 1992, reporting date.

DATES: All comments regarding changes made on an interim basis must be submitted on or before May 8, 1992.

ADDRESSES: Comments, which should refer to the OMB Docket number should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in paragraph 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUMMARY: Under the Bank Holding Company Act of 1956, as amended, the Board is responsible for the supervision and regulation of all bank holding companies. After consideration of the one public comment received, the Board has given final approval to the revisions of the FR Y-9C, as well as two other bank holding company reports.³

The revisions to the FR Y-9C, which the Board has given final approval, reflect the implementation of changes adopted by the Board in October 1991 and January 1992 to the components of risk-based capital. These revisions are needed to accurately calculate risk-based capital ratios of bank holding companies. Moreover, additional revisions have been included in response to initiatives taken to address issues relating to credit availability. The Federal Reserve also approved the consolidation of the two versions of Schedule HC-B, Loans and Lease Financing Receivables, and Schedule HC-I, Risk-Based Capital, into a single

version of those schedules to simplify the reporting form and analysis of the data.

In addition, the Board has given approval, on an interim basis, to additions to the FR Y-9C that are comparable to those revisions made to the commercial bank Reports of Condition and Income for the March 1992, reporting date. These interim revisions result in (1) splitting Schedule HC, item 10.b, into "Purchased credit card relationships" and "All other identifiable intangible assets," and (2) adding detail to Schedule HC-G, Memoranda, item 17, on the outstanding principal balance of 1-4 family residential mortgage loans serviced under contract with quasi-governmental agencies (GNMA, FNMA, and FHLMC) and other contracts to identify varying amounts of risk of loss to the servicer on mortgages serviced under a servicing contract. One additional item, which was included on the commercial bank Reports of Condition and Income effective with the March 1991 reporting date, has been added to Schedule HC-G, item 18, "Excess residential mortgage servicing fees receivable."

Revisions Approved Under OMB Delegated Authority—the Approval of the Collection of the Following Reports:

1. **FR Y-9C** (OMB No. 7100-0128), Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of \$150 million or More, or With More Than One Subsidiary Bank;

This report is to be filed by all bank holding companies that have total consolidated assets of \$150 million or more and by all multibank holding companies regardless of size. The following bank holding companies are exempt from filing the FR Y-9C, unless the Board specifically requires an exempt company to file the report: bank holding companies that are subsidiaries of another bank holding company and have total consolidated assets of less than \$1 billion; bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K. The revised report is to be implemented on a quarterly basis as of March 31, 1992, with a submission date of 45 days after the "as of" date.

Report Title: Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of \$150 million or More, or With More Than One Subsidiary Bank.

Agency Form Number: FR Y-9C
OMB Docket Number: 7100-0128

Frequency: Quarterly

Reporters: Bank Holding Companies

Annual Reporting Hours: 148,054

Estimated Average Hours per Response:

Range from 5 to 1,250 hours

Number of Respondents: 1,598

Small businesses are affected.

The information collection is mandatory (12 U.S.C. 1844) and part of the information is given confidential treatment. Confidential treatment is not routinely given to the remaining information on the form. However, confidential treatment for the remaining information, in whole or in part, can be requested in accordance with the instructions to the form.

2. **FR Y-9LP** (OMB No. 7100-0128), Parent Company Only Financial Statements for Bank Holding Companies With Total Consolidated Assets of \$150 million or More, or With More Than One Subsidiary Bank;

This report is to be filed on a parent company only basis by all bank holding companies that have total consolidated assets of \$150 million or more, or have more than one subsidiary bank. Bank holding companies of any size that are controlled by another bank holding company that has total consolidated assets of \$150 million or more, or have more than one subsidiary bank must file the FR Y-9LP. The following bank holding companies are exempt from filing the FR Y-9LP, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act and foreign banking organizations as defined by section 211.23(b) of Regulation K. This report is to be submitted with the consolidated financial statements required above. The revised report is to be implemented on a quarterly basis as of March 31, 1992, with a submission date of 45 days after the "as of" date.

Report Title: Parent Company Only Financial Statements for Bank Holding Companies With Total Consolidated Assets of \$150 million or More, or With More Than One Subsidiary Bank.

Agency Form Number: FR Y-9LP

OMB Docket Number: 7100-0128

Frequency: Quarterly

Reporters: Bank Holding Companies

Annual Reporting Hours: 32,474

Estimated Average Hours per Response:

Range from 2 to 13.5 hours

Number of Respondents: 1,933

Small businesses are affected.

The information collection is mandatory (12 U.S.C. 1844). Confidential treatment is not routinely given to the information on the form. However,

³ The other reports being revised are the Parent Company Only Financial Statements for Bank Holding Companies With Total Consolidated Assets of \$150 Million or More, or With More Than One Subsidiary Bank (FR Y-9LP; OMB No. 7100-0128) and the Parent Company Only Financial Statements for One Bank Holding Companies with Total Consolidated Assets of Less Than \$150 Million (FR Y-9SP; OMB No. 7100-0128).

confidential treatment for the information can be requested in accordance with the instructions to the form.

3. *FR Y-9SP* (OMB No. 7100-0128). Parent Company Only Financial Statements for One Bank Holding Companies With Total Consolidated Assets of Less Than \$150 Million;

This report is to be filed by all one bank holding companies with total consolidated assets of less than \$150 million. The revised report is to be implemented on a semi-annual basis as of June 30, 1992, with a submission date of 45 days after the "as of" date. The following bank holding companies are exempt from filing the *FR Y-9SP*, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act and foreign banking organizations as defined by section 211.23(b) of Regulation K. *Report Title:* Parent Company Only Financial Statements for One Bank Holding Companies With Total Consolidated Assets of Less Than \$150 Million.

Agency Form Number: FR Y-9SP

OMB Docket Number: 7100-0128

Frequency: Semi-annual

Reporters: Bank Holding Companies

Annual Reporting Hours: 28,854

Estimated Average Hours per Response:

Range from 1.5 to 6.0 hours

Number of Respondents: 4,439

Small businesses are affected.

FOR FURTHER INFORMATION CONTACT:

Arleen Lustig, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-2987), Robert T. Maahs, Senior Financial Analyst, Division of Banking Supervision and Regulation (202/872-4935), or Mark Benton, Financial Analyst, Division of Banking Supervision and Regulation (202/452-5205). The following individuals may be contacted with respect to issues related to the Paperwork Reduction Act of 1980: Stephen Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division, (202/452-3920); Frederick J. Schroeder, Chief, Financial Reports, Division of Research and Statistics (202-452-3829); and Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System has given final approval under delegated authority from the Office of Management and Budget

(OMB) to the revisions in the following reports. The reports are:

1. *FR Y-9C* (OMB No. 7100-0128), the Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of \$150 Million or More or With More Than One Subsidiary Bank;

2. *FR Y-9LP* (OMB No. 7100-0128), the Parent Company Only Financial Statements for Bank Holding Companies With Total Consolidated Assets of \$150 Million or More, or With More Than One Subsidiary Bank;

3. *FR Y-9SP* (OMB No. 7100-0128), the Parent Company Only Financial Statements for One Bank Holding Companies With Total Consolidated Assets of Less Than \$150 Million.

In addition, the Board of Governors has given approval, on an interim basis, and requested public comment, to changes made to the *FR Y-9C* report to parallel changes made to the commercial bank Reports of Condition and Income for the March 1992 reporting date.

The *FR Y-9C* consolidated financial statements are filed by large bank holding companies and bank holding companies with more than one subsidiary bank. The report includes a balance sheet, income statement, and statement of changes in equity capital with supporting schedules providing information on securities, loans, risk-based capital, deposits, interest sensitivity, average balances, off-balance sheet activities, past due loans, and loan charge-offs and recoveries. The parent company statement, *FR Y-9LP*, is filed by large bank holding companies that also file the *FR Y-9C*. The *FR Y-9LP* contains a balance sheet and income statement with a supporting schedule on investments in subsidiaries, a statement of cash flows and other selected items. The parent company statement, *FR Y-9SP*, is filed by one bank holding companies with total consolidated assets of less than \$150 million. The *FR Y-9SP* contains a balance sheet and income statement.

The Board gave approval, on a preliminary basis, to the initial component of the revisions of bank holding company reporting requirements on November 12, 1991. The notice of the new reporting requirements was published in the Federal Register in December 1991 (56 FR 64630 December 11, 1991). The comment period ended on January 8, 1992.

Comments on the additional revisions, which parallel changes made to the commercial bank Reports of Condition and Income, to the bank holding company reporting requirements approved by the Board of Governors of

the Federal Reserve System, on an interim basis, on March 26, 1992, will be accepted through May 8, 1992. The reporting requirements approved by the Board are listed above under *Revisions Approved under OMB Delegated Authority—the Approval of the Collection of the Following Reports.*

The *FR Y-9* reports historically have been, and continue to be, the primary source of financial information on bank holding companies and their nonbanking activities between on-site inspections. Financial information, as well as ratios developed from the Y series reports, are used to detect emerging financial problems, to review performance for pre-inspection analyses, to evaluate bank holding company mergers and acquisitions, and to analyze a holding company's overall financial condition and performance as part of the Federal Reserve System's overall analytical effort. The revisions to the bank holding company reporting requirements over the last several years have been directed towards (a) strengthening the Federal Reserve's ability to monitor risk between on-site inspections, (b) identifying supervisory problems at an earlier stage, and (c) monitoring the bank holding companies' capital adequacy.

Public Comments

Only one comment letter was received on the initial revisions to the bank holding company reporting requirements. This letter concerned the disclosure of restructured assets in compliance with modified terms that yielded a market rate at the time of restructuring, which is collected on Schedule HC-A, Securities, and Schedule HC-B, Loans and Lease Financing Receivables. The Board reviewed the comment with the respondent and clarified that the additional items were in agreement with the intent and meaning of Financial Accounting Standards Board (FASB) Statement No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructuring."

Report Form Revisions

Final Changes to the FR Y-9C

The *FR Y-9C* is a set of quarterly financial statements filed by bank holding companies on a consolidated basis. The Board has approved changes to this report that: (1) Reflect the implementation of changes adopted by the Board in October 1991 and January 1992 to the components of risk-based capital; and (2) have been included in response to initiatives taken to address

issues relating to credit availability. The Federal Reserve also approved the consolidation of the two versions of Schedule HC-B, Loans and Lease Financing Receivables, and Schedule HC-I, Risk-Based Capital, into a single version of those schedules to simplify the reporting form and analysis of the data.

Final Changes to the FR Y-9LP

The FR Y-9LP is set of quarterly financial statements filed for the parent company only by bank holding companies with total consolidated assets of \$150 million or more or with more than one subsidiary bank. The Federal Reserve approved the revision of item 1 by splitting it into two parts—"Cash and balances due from subsidiary or affiliated depository institutions," and "Cash and balances due from unrelated depository institutions."

Final Changes to the FR Y-9SP

The FR Y-9SP is set of semiannual financial statements filed for the parent company only of one bank holding companies with total consolidated assets of less than \$150 million. The Federal Reserve approved the revision of item 1 by splitting it into two parts—"Cash and balances due from subsidiary or affiliated depository institutions," and "Cash and balances due from unrelated depository institutions."

Interim Changes to the FR Y-9C For Which Public Comment is Requested

1. Add an additional line item to Schedule HC - Consolidated Balance Sheet
 - a. Add additional detail on "other identifiable intangibles" by collecting information on "Purchased credit card relationships", and "All other identifiable intangibles."
2. Add two line items to Schedule HC-G, Memoranda:
 - a. Add an item to collect the outstanding principal balance of 1-4 family residential mortgage loans serviced for others. Additional detail to the line item would break out the types of servicing contracts with GNMA, FHLMC (serviced with recourse to the servicer, and without recourse to the servicer), and mortgages serviced under FNMA contract (service under Special Option Contract, and serviced under Regular Option contract). Another line item is added to collect information on mortgages serviced under other servicing contracts.
 - b. Add an item to collect information on the excess residential mortgage servicing fees receivable.

Legal Status

The reports are required by law (12 U.S.C. 1844(c) and (b) and § 225.5(b) of Regulation Y, 12 CFR 225.5(b)).

The Federal Reserve System has not considered the data in these reports to be confidential. However, a bank holding company may request confidential treatment pursuant to section (b)(4), and (b)(6) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)). Confidentiality is also granted pursuant to section b(8) of the Freedom of Information Act (5 U.S.C. 552(b)(8)). Section (b)(4) provides exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Section (b)(6) provides exemption for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section (b)(8) exempts matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

However, column A and Memoranda item 2 of Schedule HC-H, Past Due and Nonaccrual Loans, Lease Financing Receivables, Placements, and Other Assets, and all items of Schedule HC-K, Highly-Leveraged Transactions, are accorded confidentiality by the Federal Reserve System pursuant to section (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(8)).

Regulatory Flexibility Act Analysis

The Board certifies that the bank holding company reporting requirements are not expected to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act [5 U.S.C. 601 et seq.]. Small bank holding companies are required to report semiannually, rather than quarterly, as is required from more complex or larger companies. The reporting requirements for the small companies require significantly less information to be submitted than the amount of information required of multibank or large bank holding companies. Additionally, the reporting requirements allow for reporting of less detail for the smaller companies on the approved items.

The information that is collected on the reports is essential for the detection of emerging financial problems, the assessment of a holding company's financial condition and capital adequacy, the performance of pre-inspection reviews, and the evaluation

of expansion activities through mergers and acquisitions. The imposition of the reporting requirements is essential for the Board's supervision of bank holding companies under the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, April 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-8044 Filed 4-7-92; 8:45 am]

BILLING CODE 6210-01-F

Banc One Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 30, 1992.

A. Federal Reserve Bank of Cleveland
(John J. Wixted, Jr., Vice President) 1455
East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; and *Banc One Mortgage Corporation*, Indianapolis, Indiana; to acquire certain assets and liabilities of *Diamond Savings and Loan Company*, Findlay, Ohio, and *Diamond Mortgage Corporation*, Findlay, Ohio, and thereby engage in mortgage loan servicing activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Fifth Third Bancorp*, Cincinnati, Ohio; to acquire *First Federal Savings and Loan Association of Lima*, Ohio, Lima, Ohio, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-8009 Filed 4-7-92; 8:45 am]

BILLING CODE 6210-01-F

First Metro Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 30, 1992.

A. Federal Reserve Bank of Atlanta
(Robert E. Heck, Vice President) 104
Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Metro Bancorp*, Muscle Shoals, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of *First Metro Bank*, Muscle Shoals, Alabama.

2. *Pioneer Bancshares, Inc.*, Chattanooga, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of *Pioneer Bank*, Chattanooga, Tennessee.

3. *Sarasota Bancorporation, Inc.*, Sarasota, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of *Sarasota Bank*, Sarasota, Florida, a *de novo* bank.

B. Federal Reserve Bank of Chicago
(David S. Epstein, Vice President) 230
South LaSalle Street, Chicago, Illinois 60690:

1. *Banner Bancorp, Inc.*, Birnamwood, Wisconsin; to acquire 82 percent of the voting shares of *Eitzen Independents, Inc.*, Eitzen, Minnesota, and thereby indirectly acquire *Eitzen State Bank*, Eitzen, Minnesota.

2. *Gore Bronson Bancorp*, Prospect Heights, Illinois; to acquire 96.83 percent of the voting shares of *Water Tower Bank*, Chicago, Illinois.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400
South Akard Street, Dallas, Texas 75222:

1. *A.N.B. Holding Company, Ltd.*, Terrell, Texas; to acquire 30 percent of the voting shares of *The American National Bank of Terrell*, Terrell, Texas.

Board of Governors of the Federal Reserve System, April 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-8010 Filed 4-7-92; 8:45 am]

BILLING CODE 6210-01-F

National Bank of Canada, et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 1992.

A. Federal Reserve Bank of New York
(William L. Rutledge, Vice President) 33
Liberty Street, New York, New York 10045:

1. *National Bank of Canada*, Montreal, Canada; to engage *de novo* in the provision of securities brokerage services, related securities credit activities, and incidental activities such as offering custodial services and cash management services pursuant to § 225.25(b)(15); and underwriting and dealing in obligations of the United States, general obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in, acceptances and certificates of deposit to the extent pursuant to § 225.25(b)(16) of the Board's Regulation Y.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street,
Philadelphia, Pennsylvania 19105:

1. *Franklin Financial Services Corporation*, Chambersburg, Pennsylvania; to engage *de novo* through its subsidiary, *FFSC Interim Federal Savings Bank*, Waynesboro, Pennsylvania, in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Franklin County, Commonwealth of Pennsylvania.

C. Federal Reserve Bank of Atlanta
(Robert E. Heck, Vice President) 104
Marietta Street, NW., Atlanta, Georgia 30303:

1. *Barnett Banks, Inc.*, Jacksonville, Florida; to *de novo* in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bancorp.*, Naperville, Illinois; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Danville, Illinois; Moline, Illinois; Plainfield, Illinois, and Waukegan, Illinois.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Security Bank Shares, Inc.*, Iron River, Wisconsin; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-8011 Filed 4-7-92; 8:45 am]

BILLING CODE 6210-01-F

Ann McKeel Ross; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 30, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Ann McKeel Ross*, Temple Terrace, Florida; to acquire 2.70 percent of the voting shares of The Terrace Bank of Florida, Tampa, Florida.

Board of Governors of the Federal Reserve System, April 2, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-8012 Filed 4-7-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Solicitation of Nominations for Membership on the U.S. Advisory Board on Child Abuse and Neglect

AGENCY: Administration for Children and Families (ACF) HHS.

ACTION: Notice of solicitation of nominations for membership on the U.S. Advisory Board for Child Abuse and Neglect.

SUMMARY: Section 102(b) of the Child Abuse Prevention and Treatment Act, (Public Law 100-294, provides that the Secretary shall appoint members to the Advisory Board on Child Abuse and Neglect. This notice solicits nominations for appointment to the Board, sets procedures for submission and receipt of nominations, and provides information concerning the membership, duties and responsibilities of the Board.

DATES: Nominations must be received by May 8, 1992.

ADDRESSES: Nomination must be in writing and submitted as follows: Assistant Secretary for Children and Families, 370 L'Enfant Promenade, SW., suite 600, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Megan Hedden, Special Assistant, Administration for Children and Families, (202) 401-2337.

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Advisory Board on Child Abuse and Neglect (the Board) was established under provisions of Public Law 100-294, which reenacted the Child Abuse Prevention and Treatment Act (the Act). The Board came into existence on May 30, 1989. Section 102(b) of the Act requires the Secretary to publish a notice in the *Federal Register* soliciting nominations for the appointment of members from the general public to the Board.

The Act specifies the composition of the Board, the number of members, professional and other areas of expertise, terms of office, meeting duties, and compensation of members. This information is provided below in

order to solicit the nomination of five highly qualified persons to the Board.

Any changes to the nomination process and/or the Board's composition, responsibilities and compensation which result from the likelihood that the U.S. Congress will enact new authorizing legislation will be implemented as appropriate.

B. Composition of the Board

The Board consists of 15 members appointed by the Secretary, 13 from the general public and two from the Federal Government. In making all the appointments from the general public, the Secretary is required by the Act to give due consideration to representation of ethnic or racial minorities and diverse geographic areas.

C. Representation on the Board

The public members of the Board must be knowledgeable in child abuse and neglect prevention, intervention, treatment, or research, and must represent the following areas:

- (1) Law (including the judiciary);
- (2) Psychology (including child development);
- (3) Social services (including child protective services);
- (4) Medicine (including pediatrics);
- (5) State and local government;
- (6) Organizations providing services to persons with disabilities;
- (7) Organizations providing services to adolescents;
- (8) Teachers;
- (9) Parent self-help organizations;
- (10) Parents' groups; and
- (11) Voluntary groups.

D. Terms of Office

The length of the terms to which persons from the general public are appointed is four years, except for appointments to complete the balance of terms of members who resigned prior to the expiration of their term. Once appointed, a person from the general public may be reappointed to an additional consecutive term and may be reappointed to non-consecutive terms without limit at the discretion of the Secretary.

E. Meetings

The Board meets a minimum of two times per year. The duration of each meeting is usually four days. To date, the Board has held ten meetings. Much of the Board's work is completed by conference calls.

F. Duties of the Board

1. The Board must annually submit to the Secretary and the appropriate

Committees of the Congress a report containing:

(a) Recommendations on coordinating Federal child abuse and neglect activities to prevent duplication and ensure efficient allocations of resources and program effectiveness; and

(b) Recommendations for carrying out the purposes of the Act.

2. The Board must annually submit to the Secretary and the Director of the National Center on Child Abuse and Neglect a report containing long-term and short-term recommendations on:

(a) Programs;

(b) Research;

(c) Grant and contract needs;

(d) Areas of unmet needs; and

(e) Areas to which the Secretary should provide grant and contract priorities under the Act's research and demonstration authorities.

3. The Board must annually review the budget of the National Center on Child Abuse and Neglect and submit to the Director a report concerning each review.

In addition, the Board holds hearings, conducts symposia, and issues special reports and position papers.

G. Compensation

1. Except as provided in paragraph (3), members of the Board, other than those regularly employed by the Federal government, while serving on business of the Board may receive compensation at the rate not in excess of the daily equivalent payable to a GS-18 employee under section 5332 of title 5, United States Code, including travel time.

2. Except as provided in paragraph (3), members of the Board, while serving on business of the Board away from their homes or regular places of business, may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

3. The Director may not compensate a member of the Board under this section if the member is receiving compensation or travel expenses from another source while serving on business of the Board.

H. Nominations

At this time the Department is soliciting nominations for five members possessing specific expertise in child maltreatment. We required also representation of expertise in one of the following areas: elementary or secondary school teaching, State and local government, parents' groups, and voluntary groups; as well as other areas. The term of the seat for the person with expertise in elementary or secondary

school teaching will expire on May 29, 1995. Terms for the other seats will expire on May 29, 1996. Nominations must be in writing and must include biographical information, vitae, address and telephone number of the nominee, as well as a brief description of relevant information to fulfill the required areas of expertise stated above and under sections B and C of this notice and to successfully execute the responsibilities of a member of the Board. Two references from persons with personal knowledge of the nominee's expertise in the field of child maltreatment and in any of the specific categories of representation must also be included. The same individual may be nominated for a seat in more than one category. Nominations may be made for one's self or for someone else.

Dated: March 28, 1992.

Jo Anne B. Barnhardt,
Assistant Secretary for Children and Families.

[FR Doc. 92-7980 Filed 4-7-92; 8:45 am]

BILLING CODE 4130-01-M

Food and Drug Administration

[Docket No. 92F-0117]

Hoechst Aktiengesellschaft; Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Aktiengesellschaft has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of methylated 4,4'-bis (2-benzoxazolyl) stilbenes, with the major portion consisting of 4-(2-benzoxazolyl)-4'-(5-methyl-2-benzoxazolyl) stilbene and lesser portions consisting of 4,4'-bis (2-benzoxazolyl) stilbene, as an optical brightener in all food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4317) has been filed by Hoechst Aktiengesellschaft, c/o 1001 G St., NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR

178.3297) to provide for the safe use of a mixture of methylated 4,4'-bis(2-benzoxazolyl) stilbenes, with the major portion consisting of 4-(2-benzoxazolyl)-4'-(5-methyl-2-benzoxazolyl) stilbene and lesser portions consisting of 4,4'-bis (5-methyl-2-benzoxazolyl) stilbene and 4,4'-bis (2-benzoxazolyl) stilbene, as an optical brightener in all food contact polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: March 31, 1992.

Fred R. Shank,
Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-8029 Filed 4-7-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92F-0111]

Lubrizol Corp.; Filing of Food Additive Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Lubrizol Corp. has filed three petitions proposing that the food additive regulations be amended to provide for the safe use of poly(sodium 2-acrylamido-2-methylpropanesulfonate) in adhesives and as components of paper and paperboard intended to contact food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that three petitions (FAP 9B4133, 9B4131, 9B4132) have been filed on behalf of The Lubrizol Corp., 29400 Lakeland Blvd., Wickliffe, OH 44092-2298. The petitions propose respectively that the food additive regulations in § 175.105 Adhesives (21 CFR 175.105), § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods. (21 CFR 176.170), and § 176.180 Components of paper and

paperboard in contact with dry food (21 CFR 176.180) be amended to provide for the safe use of poly(sodium 2-acrylamido-2-methylpropanesulfonate) in adhesives and as components of paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: March 31, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-8027 Filed 4-7-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92G-0129]

Weyerhaeuser Co.; Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Weyerhaeuser Co. has filed a petition (GRASP 2G0388) proposing that cellulose [(C₆H₁₀O₅)_n, an unbranched polymer of D-glucopyranose units joined by β -1,4-glucosidic bonds) derived by culturing *Acetobacter aceti* subspecies *xylinum* be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by June 8, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Owen Fields, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9523.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (secs. 201(s), 409(b)(5) (21 U.S.C. 321(s), 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Weyerhaeuser Co., Tacoma, WA 98477, has filed a petition (GRASP 2G0388) proposing that cellulose [(C₆H₁₀O₅)_n, an unbranched polymer of D-glucopyranose

units joined by β -1,4-glucosidic bonds) derived by culturing *Acetobacter aceti* subspecies *xylinum* be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 is filed by the agency. There is no pre-filing review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Interested persons may, on or before June 8, 1992, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-8028 Filed 4-7-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92N-0160]

Fujisawa USA, Lyphomed Division; Withdrawal of Approval of One New Drug Application and Seven Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of one new drug application (NDA) and seven abbreviated new drug applications (ANDA's) held by Fujisawa USA, Lyphomed Division (Lyphomed), 2045 North Cornell Ave., Melrose Park,

IL 60160. Lyphomed has agreed in writing to permit FDA to withdraw approval of the applications, and has waived its opportunity for a hearing. This action stems from the discovery of untrue statements, unresolved discrepancies, and omissions concerning information used to support approval of the application.

EFFECTIVE DATE: April 8, 1992.

FOR FURTHER INFORMATION CONTACT: Christina Good, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of untrue statements, discrepancies, and omissions that relate to manufacturing, control, and stability tests of drug products used to support approval of the following NDA and ANDA's held by Lyphomed:

NDA 18-507, Furosemide Injection, 10 milligrams per milliliter (mg/mL);

ANDA 70-058, Dopamine Hydrochloride Injection, 40 mg;

ANDA 70-059, Dopamine Hydrochloride Injection, 80 mg;

ANDA 70-071, Metronidazole Injection, 500 mg/100 mL;

ANDA 70-134, Bretylium Tosylate Injection, 50 mg/mL;

ANDA 70-295, Metronidazole Hydrochloride for Injection, 500 mg base/vial;

ANDA 70-364, Dopamine Hydrochloride Injection, 160 mg; and

ANDA 88-939, Leucovorin Calcium for Injection, 50 mg base/vial.

After careful review of inspectional findings, the agency determined that there was sufficient justification to initiate proceedings to withdraw approval of the products listed above. Lyphomed was notified in writing of these determinations on January 28, 1992, and, in accordance with 21 CFR 314.150(d), was offered an opportunity to permit FDA to withdraw the applications. Subsequently, in letters dated March 5, 1992, Lyphomed requested withdrawal of the NDA and the ANDA's, thereby waiving its opportunity for a hearing. During the time FDA was initiating the process for downgrading the therapeutic equivalence codes of the applications, Lyphomed specifically requested withdrawal of ANDA 88-939 in a letter dated February 10, 1992. FDA separately acknowledged receipt of this requested withdrawal of approval for ANDA 88-939 (Leucovorin Calcium for Injection, 50 mg base/vial) and stated that appropriate notice of withdrawal of

approval would be given by publication in the **Federal Register** in accordance with 21 CFR 314.152.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's and the NDA listed above, and all amendments and supplements thereto is withdrawn effective April 8, 1992. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Dated: March 31, 1992.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 92-8026 Filed 4-7-92; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is being given that chapter S2, of the Office of the Deputy Commissioner, Operations, is being amended to reflect the establishment of a new office in that component. The 800 Number Management Staff (S2KA) is being deleted from the Office of Operations Management and Program Integration (S2K), and the Office of 800 Number Operations (S2M) is being established. The changes are as follows:

Section S2K.00 The Office of Operations Management and Program Integration—(Mission): (Correct typographical error S1K.00 to S2K.00)

Section S2K.10 The Office of Operations Management and Program Integration—(Organization):

Delete:

D. The 800 Number Management Staff (S2KA).

Reletter:

"E" to "D" and "F" to "E."

Section S2K.20 The Office of Operations Management and Program Integration—(Functions):

Delete:

D. The 800 Number Management Staff (S2KA) in its entirety.

Reletter:

"E" to "D" and "F" to "E."

Add:

Subchapter S2M—The Office of 800 Number Operations

S2M.00 Mission
S2M.10 Organization
S2M.20 Functions

Section S2M.00 The Office of 800 Number Operations—(Mission): The Office of 800 Number Operations is responsible for planning, implementing, operating and evaluating SSA's 800 Number service to the public. This office develops and implements plans for routing telephone calls within the 800 number system and for evaluating and modifying these plans as needed to maximize call answering effectiveness and efficiency. The office plans and conducts studies and analyses of 800 number operations to assess and improve the service provided.

The office provides broad operations support to 37 teleservice centers (TSCs), including developing and communicating uniform operating policies and procedures. The office establishes close, effective working relationships with SSA policy, program and administrative components and with other Federal agencies which have important roles in the delivery and evaluation of SSA's 800 number telephone service to the public.

Section S2M.10 The Office of 800 Number Operations—(Organization): The Office of 800 Number Operations includes:

A. The Director of the Office of 800 Number Operations (S2M).

B. The Deputy Director of the Office of 800 Number Operations (S2M).

C. The Immediate Office of the Director of the Office of 800 Number Operations (S2M).

D. The Planning Staff (S2MA).

E. The Operations Staff (S2MB).

F. The Teleservice Control Center (S2MC).

Section S2M.20 The Office of 800 Number Operations—(Functions):

A. The Director, Office of 800 Number Operations (S2M) is directly responsible to the Deputy Commissioner for Operations (DCO) for carrying out the Office's mission relating to the operation of SSA's national 800 Number service and provides general supervision to the major components in the Office.

B. The Deputy Director, Office of 800 Number Operations (S2M) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Office of 800 Number Operations (S2M) provides the Director with staff assistance over the full range of his/her responsibilities.

D. The Planning Staff (S2MA).

1. Plans, designs, implements and evaluates studies and analyses to assess 800 number service and affected operational goals and objectives.

2. Develops and evaluates 800 number service indicators. Provides leadership on 800 number planning initiatives for the DCO.

3. Studies and evaluates the application of innovative concepts and technologies for SSA's national 800 number service.

4. Analyzes 800 number management information data, evaluates trends and long-range planning needs and prepares executive-level reports.

5. Evaluates and plans for implementation of legislative issues that impact SSA's 800 number service. Works with other SSA components and other Federal agencies that conduct evaluations of 800 number services.

E. The Operations Staff (S2MB).

1. Plans, develops, implements and evaluates systematic measurement processes to assess the operational effectiveness and efficiency of 800 number operations.

2. Develops and maintains the TSC Operating Guide, other TSC operating instructions and teleservice representative (TSR) training materials.

3. Develops and evaluates plans for the effective utilization of TSC resources. Evaluates the use of automated equipment and backup answering units.

4. Develops and evaluates operational TRS quality review policies. Evaluates TRS training needs to ensure quality public service is provided.

F. The Teleservice Control Center (S2MC).

1. Plans, develops, implements and evaluates the effectiveness and efficiency of the routing of 800 number calls to the geographically dispersed TSCs that provide 800 number service.

2. Monitors the daily operation of routing plans and works closely with management in TSCs to make emergency changes to the plans to ensure the best possible public service.

3. Develops and maintains an effective management information system needed for the 800 number operation and produces the required reports. Analyzes the information to evaluate the routing of calls.

4. Identifies and assesses trends and/or patterns that impact call volumes and resource requirements. Project call volumes and creates staffing models and other techniques to determine future call handling capacity needs.

Dated: December 9, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 92-7876 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-11-M

[Social Security Acquiescence Ruling 92-4(11)]

Bloodsworth v. Heckler; Judicial Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge Decision

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 92-4(11).

EFFECTIVE DATE: April 8, 1992.

FOR FURTHER INFORMATION CONTACT: Ethel B. Hill, Esq., Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966-5044.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to Appeals Council dismissals within the Eleventh Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after April 8, 1992. If we made a determination or decision on your application for benefits between April 25, 1983, the date of the Court of Appeals' decision and April 8, 1992, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the Federal

Register to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the Federal Register stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Gwendolyn S. King,

Commissioner of Social Security.

Acquiescence Ruling 92-4(11)

Bloodsworth v. Heckler, 703 F.2d 1233 (11th Cir. 1983)—Judicial Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge (ALJ) Decision.

Issue

Whether an Appeals Council dismissal of a request for review of an ALJ decision is a "final decision" which is judicially reviewable.

Statute/Regulation/Ruling Citation

Sections 205(g) and (h) and 1631(c)(3) of the Social Security Act (42 U.S.C. sections 405(g) and (h) and 1383(c)(3)); 20 CFR 404.955, 404.967, 404.971, 404.972, 404.982, 416.1455, 416.1467, 416.1471, 416.1472, 416.1482 and 422.210.

Circuit

Eleventh (Alabama, Florida, Georgia) *Bloodsworth v. Heckler*, 703 F.2d 1233 (11th Cir. 1983).

Applicability Of Ruling

This ruling applies only to Appeals Council dismissals of requests for review of ALJ decisions.

Description Of Case

In 1979, Mr. Jack Bloodsworth, the plaintiff in this case, filed applications for a period of disability, disability insurance benefits, and supplemental security income payments. The applications were denied initially, on reconsideration, and by an ALJ after a hearing. The claimant missed the 60 day time limit for appealing to the Appeals Council, and his request for review of the ALJ decision, which was filed approximately two weeks after the deadline, was dismissed by the Council on the basis of untimeliness without good cause.

The claimant then filed a complaint in Federal district court, alleging that denial of the extension of time to file was not supported by substantial evidence. The district court rejected the Secretary's argument that it lacked jurisdiction,¹ reviewed the Appeals Council's denial of an extension of time, and remanded the case for consideration of the merits of Mr. Bloodsworth's claim. On remand, the Appeals Council restated its position that the plaintiff's request for review was untimely filed but considered the claim on the merits as ordered, and denied the plaintiff's request for review. The district court affirmed the decision of the Secretary and the plaintiff appealed. On appeal, the Secretary again argued that the district court lacked jurisdiction.

Holding

The Court of Appeals held that an Appeals Council dismissal of a request for review of an ALJ decision for reasons of untimeliness is a "final decision" of the Secretary made after a hearing within the meaning of section 205(g) of the Social Security Act² and, therefore, subject to judicial review.

The appeals court said that regarding the right to judicial review, neither the statute nor the regulations make any distinction between Appeals Council dismissals and "determinations on the merits." The court found that both actions are equally final and that both trigger a right to review by the district court. The court read 20 CFR 404.972 and 404.981³ to provide that "an Appeals

¹ The Secretary argued that the district court lacked subject matter jurisdiction under sections 205(g) and (h) of the Social Security Act (42 U.S.C. section 405(g) and (h)) because the plaintiff failed to meet the "final decision" and "made after a hearing" requirements of these sections. The Secretary contended that (1) dismissal of a request for review on the basis of untimeliness without "good cause" is not a "final decision" for it does not constitute a determination on the merits and (2) it is not "made after a hearing" because no hearing is granted solely and specifically on the request for review itself.

² Section 205(g) of the Social Security Act (42 U.S.C. section 405(g)) provides in pertinent part " . . . any individual, after any final decision of the Secretary made after a hearing to which he was a party . . . , may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow."

³ 20 CFR 404.981 and 416.1481 state in pertinent part " . . . the Appeals Council's decision, or the decision of the administrative law judge if the request for review is denied, is binding unless you or another party file an action in Federal district court."

Council review determination, on whatever grounds, is perceived as the final decision from which to take an appeal to the district court under section 405(g)."

Statement As To How Bloodsworth Differs From Social Security Policy

The Eleventh Circuit has held that an Appeals Council dismissal of a request for review of an ALJ decision for reasons of untimeliness is a "final decision of the Secretary made after a hearing" within the meaning of section 205(g) of the Social Security Act and subject to judicial review.

Contrary to the holding of the *Bloodsworth* court, SSA policy is that the regulations make a clear distinction in regard to rights of judicial review between dismissals and determinations on the merits by the Appeals Council.⁴ The Appeals Council may take three types of action following an ALJ decision: it may grant a request for review, it may deny a request for review, or it may dismiss a request for review. The dismissal of a request for review of an ALJ decision is binding and not subject to further review. 20 CFR 404.972, 416.1472. See also 20 CFR 404.955, 416.1455, 422.210 (Appeals Council grant of request or denial of request for review of an ALJ decision is judicially reviewable). The Appeals Council will dismiss a request for review if it is untimely filed and the time for filing has not been extended,⁵ and the Appeals Council may dismiss a request for review for other prescribed reasons. 20 CFR 404.971, 416.1471.

SSA's position, based on the above-cited regulations, is that an Appeals Council dismissal is not a "final decision of the Secretary made after a hearing" and, therefore, is not judicially reviewable under section 205(g) of the Act (42 U.S.C. 405(g)).

Although the *Bloodsworth* holding is contrary to SSA's interpretation of the Act and its regulations, the issue is a federal jurisdiction matter and would not affect Agency policy at the ALJ or Appeals Council levels.⁶ Therefore, the

Agency did not publish an Acquiescence Ruling because it was initially thought unnecessary. This opinion has since changed because of the recently issued acquiescence regulations.

Explanation Of How SSA Will Apply This Decision Within The Circuit

This ruling applies only to cases involving claimants who reside in Alabama, Florida, or Georgia at the time of the Appeals Council dismissal of the request for review.

Notices sent by the Appeals Council which dismiss requests for review of ALJ decisions will advise claimants of their right to request judicial review.

[FR Doc 92-8045 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-29-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-92-983; FR-3212-D-01]

Amendment of Delegation of Procurement Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of amendment of delegation of authority.

SUMMARY: The delegation of authority published in the *Federal Register* on October 17, 1985 at 50 FR 42097 (Docket No. D-85-805; FR-2082) is amended by revising the delegation of procurement authority to the Assistant Secretary for administration to remove language requiring the Assistant Secretary for Administration, as Procurement Executive, to redelegate procurement authority to the Assistant Secretary for Housing-Federal Housing Commissioner.

EFFECTIVE DATE: March 25, 1992.

FOR FURTHER INFORMATION CONTACT: Roosevelt Jones, Director, Office of Procurement and Contracts, room 5272, 451 7th Street, SW., Washington, DC 20410, (202) 708-1290. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This delegation of authority is being amended to implement the Office of Federal Procurement Policy Act Amendments of 1983 (41 U.S.C. 414(2)), and Executive Order 12352, "Federal Procurement Reforms", dated March 17, 1982, which provide for high level central responsibility for procurement in an Executive Agency under the

Department's Procurement Executive, who in HUD is the Assistant Secretary for Administration. The Department's senior management recently agreed on a consensus plan for improving procurement under the Acquired Property program, which necessitates this revision to previous delegations of authority. Under the Acquired Property program, the Department manages and disposes of properties owned or held by HUD as mortgagee-in-possession pursuant to the National Housing Act (12 U.S.C. 1701 *et seq.*).

According, the delegation of authority published in the *Federal Register* on October 17, 1985 at 50 FR 42097 (Docket No. D-85-805; FR-2082) is amended as follows:

Section A. Amendment of Delegation of Authority

Section A, paragraph 1 of the delegation of authority published on October 17, 1985 at 50 FR 42097 (Docket No. D-85-805; FR-2082) is revised to read as follows:

Section A. Authority Delegated

The Assistant Secretary for Administration, designated as the Department's Procurement Executive, is authorized to exercise all duties, responsibilities and powers of the Secretary with respect to Departmental procurement, to implement Executive Order 12352, "Federal Procurement Reforms", dated March 17, 1982, and the Department's Procurement Executive Charter, dated March 30, 1983.

The authority delegated to the Procurement Executive includes the following duties, responsibilities and powers:

1. Authority to enter into and administer all procurement contracts within the Department and make related determinations.

Section B. Delegation Revoked in Part

Section C, paragraph 2 and section D, paragraph 2 of the delegation of authority published on October 17, 1985 at 50 FR 42097 (Docket No. D-85-805; FR-2082) are revoked.

Authority: 41 U.S.C. 414(2); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 25, 1992.

Jack Kemp,
Secretary.

[FR Doc. 92-8092 Filed 4-7-92; 8:45 am]

BILLING CODE 4210-32-M

⁴As the Supreme Court noted, the term "final decision" is not defined in the Social Security Act, but the Act gives the Secretary authority to prescribe its meaning by regulations. *Weinberger v. Salfi*, 422 U.S. 749, 766 (1975).

⁵The Appeals Council upon good cause shown, may extend the time for filing a request for review of an ALJ decision.

⁶Since *Bloodsworth* was decided, the Agency has not been filing motions to dismiss in cases within the Eleventh Circuit involving Appeals Council dismissals of untimely requests for review of ALJ decisions.

Office of the Assistant Secretary for Administration

[Docket No. D-92-984; FR-3213; D-01]

Amendment of Redefinition of Procurement Authority**AGENCY:** Office of the Assistant Secretary for Administration, HUD.**ACTION:** Amendment of redefinition of procurement authority.

SUMMARY: The redefinition of authority published in the *Federal Register* on October 17, 1985 at 50 FR 42098 (Docket No. D-85-806; FR-2082) is amended to revise language redefining procurement authority to the Assistant Secretary for Housing-Federal Housing Commissioner and to clarify delegations of procurement authority in HUD's Field structure. Conflicting redefinitions are revoked in part.

EFFECTIVE DATE: March 26, 1992.**FOR FURTHER INFORMATION CONTACT:**

Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, room 5262, 451 7th Street, SW., Washington, DC 20410, (202) 708-0294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This redefinition of authority is being amended to implement the Office of Federal Procurement Policy Act Amendments of 1983 (41 U.S.C. 414(2)), and Executive Order 12352, "Federal Procurement Reforms", dated March 17, 1982, which provide for high level central responsibility for procurement in an Executive Agency under the Department's Procurement Executive, who in HUD is the Assistant Secretary for Administration. The Department's senior management recently agreed on a consensus plan for improving procurement under the Acquired Property program, which necessitates this revision to previous redefinitions of authority. Under the Acquired Property program, the Department manages and disposes of properties owned or held by HUD as mortgagee-in-possession pursuant to the National Housing Act (12 U.S.C. 1701 *et seq.*). In a delegation of authority published elsewhere in today's *Federal Register* the Secretary revised the delegation of procurement authority to the Assistant Secretary for Administration to remove language requiring the Assistant Secretary for Administration, as Procurement Executive, to redelegate procurement authority to the Assistant Secretary for Housing-Federal Housing Commissioner. This redefinition of authority is being amended to revise language redefining procurement authority to the Assistant

Secretary for Housing-Federal Housing Commissioner, and to clarify delegations of procurement authority to HUD Field Offices.

Accordingly, the redefinition of authority published in the *Federal Register* on October 17, 1985 at 50 FR 42098 (Docket No. D-85-806; FR-2082) is amended as follows:

Section A. Amendment of Redefinition of Authority

Section A of the Delegation of Authority published on October 17, 1985 at 50 FR 42098 (Docket No. D-85-806; FR-2082) is amended to read as follows:

Section A. Authority Redefined

The Procurement Executive redefines the following power and authority:

1. The President of GNMA is authorized to exercise procurement authority with respect to requirements related to GNMA's programmatic functions. The President of GNMA exercises statutory procurement authority with respect to such requirements. The President of GNMA is authorized to redelegate any of the powers or authority redefined to him or her to any GNMA employee or employees.

2. Each Regional Administrator-Regional Housing Commissioner, Director, Regional Office of Administration, and Director, Regional Contracting Division is designated as a Contracting Officer and these officials may, subject to any limitations imposed by the Assistant Secretary for Administration (Procurement Executive):

a. Enter into and administer all procurement contracts and interagency agreements for property and services required by the Department (including the publication in newspapers of advertisements, notices, or proposals), and grants and cooperative agreements in support of the Department's discretionary assistance programs, with regard to activities within his or her respective Region, unless otherwise delegated by the Assistant Secretary for Administration; and

b. Redefine the authority delegated by this notice to:

(1) Qualified Regional Contracting Division employees;

(2) Qualified Administration employees outside the Regional Contracting Division; and,

(3) Qualified Housing employees for procurement contracts for the management and/or disposition of properties owned or held by HUD as mortgagee-in-possession under the National Housing Act (12 U.S.C. 1701 *et*

seq.). Provided, however, that the Regional Administrator-Regional Housing Commissioner shall redelegate the following procurement authority under this subparagraph 2.b.(3) to Field Office Directors of Housing Management:

(i) Authority to enter into emergency procurements (pursuant to FAR 6.302-2); and

(ii) Authority to enter small purchases (pursuant to FAR Part 13) in those Field Offices without full-time contracting personnel.

The Regional Administrator may also redelegate the authority in subparagraph 2.b.(3)(ii) above to the Office of Housing employees designated by the Field Office Director of Housing Management in those Field Offices without full-time contracting personnel.

3. The authority in paragraph 2 of section A does not apply to the acquisition (including purchase, lease, or rental) of Federal Information Processing (FIP) resources as defined in the Federal Information Resources Management Regulation, unless prior approval has been received from the Office of Information Policies and Systems (OIPS). Acquisition (including purchase, lease, or rental) of FIP resources, as part of training or other support provided by a contractor, is also prohibited without the prior approval of OIPS.

4. Any redefinitions of authority in subparagraph 2.b. shall be accomplished on a Standard Form 1402, Certificate of Appointment, which may be revoked upon a showing that the individual has consistently failed to adhere to sound procurement practices, and with respect to the authority in subparagraphs 2.b.(3)(i) and 2.b.(3)(ii) after consultation with the Assistant Secretary for Housing-Federal Commissioner.

Section B. Delegations Revoked in Part

The following delegations are revoked in part:

1. Section A of the redefinition of authority published on February 15, 1991 at 56 FR 6407.

2. Section B of the redefinition of authority published on October 17, 1985 at 50 FR 42098.

3. Section A, subparagraph 1.(b) of the delegation of authority published on October 16, 1979 at 44 FR 59670.

Authority: 41 U.S.C. 414(2); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. § 3535(d)).

Dated: March 26, 1992.

Jim E. Tarro,

Assistant Secretary for Administration.

[FR Doc. 92-8093 Filed 4-7-92; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-4230-15; F-19155-16]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 22,477.32 acres. The lands involved are in the vicinity of Galena, Alaska.

Kateel River Meridian, Alaska

T. 10 S., R. 8 E.

Secs. 1 through 36, inclusive.

Containing 22,477.32 acres as shown on the plat of survey accepted April 4, 1980.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any part claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until May 8, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Mary M. Bone,

Supervisor, Fairbanks Section, Branch of Doyon/Northwest Adjudication.

[FR Doc. 92-8042 Filed 4-7-92; 8:45 am]

BILLING CODE 4310-JA-M

Bureau of Land Management

[AZ-202-00-4212-13; AZA-26541]

Public Land Exchange, Maricopa, Pinal and Yavapai Counties, Arizona

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of realty action.

SUMMARY: All or part of the following described sections containing federal lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 1 N., R. 3 W.,

Secs. 3 and 7

T. 1 N., R. 4 W.,

Secs. 1, 11, 12, 13, and 14.

T. 1 N., R. 5 W.,

Sec. 27.

T. 2 N., R. 3 W.,

Secs. 4, 5, 8, 9, 14, 15, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 33, 34 and 35.

T. 2 N., R. 4 W.,

Sec. 1.

T. 2 N., R. 5 W.,

Sec. 36.

T. 8 N., R. 5 W.,

Sec. 15.

T. 3 N., R. 4 W.,

Secs. 1, 11, 12, 13, 14, 24, 25 and 36.

T. 1 S., R. 2 W.,

Secs. 8, 9, 30, 31, 32 and 36.

T. 1 S., R. 3 W.,

Secs. 24, 25, 31 and 32.

T. 1 S., R. 4 W.,

Secs. 35 and 36.

T. 2 S., R. 1 W.,

Secs. 2, 11, 12, 25, 26, 27, 34 and 35.

T. 2 S., R. 2 W.,

Secs. 5, 6, 18, 28 and 33.

T. 2 S., R. 3 W.,

Secs. 5, 6, 8, 17, and 19.

T. 2 S., R. 4 W.,

Sec. 1.

T. 3 S., R. 1 W.,

Secs. 1, 3, 4, 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35 and 36.

T. 4 S., R. 1 E.,

Secs. 1, 3, 6, 7, 9, 10, 11, 12, 13, 34 and 35.

T. 5 S., R. 1 E.,

Secs. 2, 3, 10, 11, 13, 15, 22, 23, 24, 25, 27, 35 and 36.

T. 6 S., R. 1 E.,

Secs. 2, 3, 10, 11, 12, 13, 14, 24, 25, 26, 35 and 36.

T. 7 S., R. 1 E.,

Secs. 1, 5 and 6.

T. 5 S., R. 2 E.,

Secs. 5, 6, 7, 8, 9, 19, 29, 30, 31 and 32.

T. 6 S., R. 2 E.,

Secs. 5, 6, 7, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33.

T. 7 S., R. 2 E.,

Secs. 4, 5 and 6.

T. 7 S., R. 3 E.,

Secs. 3, 4 and 5.

Comprising 71,221.08 acres, more or less.

Final determination on disposal will await completion of an environmental analysis. In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to the Federal Land Policy and Management Act of 1976.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2051 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 30, 1992.

Henri R. Bisson,

District Manager.

[FR Doc. 92-8039 Filed 4-7-92; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-00-4212-13; AZA-25295]

Public Land Exchange, Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: All or part of the following described sections containing federal lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 2 S., R. 3 W.,

Secs. 7 and 18.

T. 2 S., R. 4 W.,

Secs. 11, 12, 13 and 14.

Comprising 2055.19 acres, more or less.

Final determination on disposal will await completion of an environmental analysis. In accordance with the regulations of 43 CFR 2201.1 (b), publication of this notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to the Federal Land Policy and Management Act of 1976.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such

lands or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 30, 1992.

Henri R. Bisson,

District Manager.

[FR Doc. 92-8040 Filed 4-7-92; 8:45 am]

BILLING CODE 4310-32-M

[ID-943-4214-10; IDI-28738]

Proposed Withdrawal and Opportunity for Public Meeting; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 525.57 acres of public land in Boise county to protect the archeological values of the Centerville Townsite. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by July 7, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 208 384-3162.

SUPPLEMENTARY INFORMATION: On March 5, 1992, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws subject to valid existing rights.

Boise Meridian

T. 7 N., R. 5 E.,
Sec. 29.

The area described contains 525.57 acres in Idaho County.

The purpose of the proposed withdrawal is to protect the archeological values of the Centerville Townsite.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may

present their views in writing to the Idaho State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are timber sales, rights-of-way, recreation use and wildlife or vegetative studies.

Dated: March 30, 1992.

William E. Ireland,

Chief, Realty Operations.

[FR Doc. 92-7985 Filed 4-7-92; 8:45 am]

BILLING CODE 4310-66-M

Minerals Management Service

[DES 92-11]

Gulf of Mexico Region; Availability of the Proposed Notices of Sale and the Draft Environmental Impact Statement and the Intent To Hold Public Hearings Regarding Proposed Central and Western Gulf of Mexico Sales 142 and 143

Gulf of Mexico (GOM) Outer Continental Shelf (OCS); notice of availability of proposed notices of sale for proposed Oil and Gas Lease Sale 142; Central GOM, and proposed Oil and Gas Lease Sale 143, Western GOM. This notice of availability is published, pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed notices of sale. The proposed

Notices of Sale for proposed Sales 142 and 143 may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, or by telephone (504) 736-2519.

The final notice of Sale for each sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening for proposed Sale 142 is scheduled for March 1993, and for proposed Sale 143, bid opening is scheduled for August 1993.

Availability of the Draft Environmental Impact Statement

The Minerals Management Service has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1993 OCS oil and gas lease sales in the Central and Western GOM. The proposed Central Gulf Sale 142 will offer for lease approximately 28 million acres, and the Western Gulf Sale 143 will offer approximately 26 million acres (acreage as of January 1992). Single copies of the draft EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, attention: Public Information Office, 1201 Elmwood Park Boulevard, room 114, New Orleans, Louisiana 70123.

Copies of the draft EIS will also be available for review by the public in the following libraries:

Texas

Austin Public Library, 402 West Ninth Street, Austin
Houston Public Library, 500 McKinney Street, Houston
Dallas Public Library, 1513 Young Street, Dallas
Brazoria County Library, 410 Brazoport Boulevard, Freeport
LaRatama Library, 505 Mesquite Street, Corpus Christi
Texas Southmost College Library, 1825 May Street, Brownsville
Rosenberg Library, 2310 Sealy Street, Galveston
Texas State Library, 1200 Brazos Street, Austin
Texas A&M University, Evans Library, Spence and Lubbock Streets, College Station
University of Texas, Lyndon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin
The University of Texas at Dallas Library, 2601 North Floyd Road, Richardson
Lamar University, Gray Library, Virginia Avenue, Beaumont
East Texas State University Library, 2600 Neal Street, Commerce
Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches

University of Texas, 21st and Speedway Streets, Austin
 University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin
 Baylor University Library, 13125 Third Street, Waco
 University of Texas at Arlington, 701 South Cooper Street, Arlington
 University of Houston-University Park, 4800 Calhoun Boulevard, Houston
 University of Texas at El Paso, Wiggins Road and University Avenue, El Paso
 Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene
 Texas Tech University Library, 18th and Boston Streets, Lubbock
 University of Texas at San Antonio, John Peace Boulevard, San Antonio.

Louisiana

Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans
 Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston
 New Orleans Public Library, 219 Loyola Avenue, New Orleans
 University of New Orleans Library, Lakeshore Drive, New Orleans
 Louisiana State University Library, 760 Riverside Road, Baton Rouge
 Lafayette Public Library, 301 W. Congress Street, Lafayette
 Calcasieu Parish Library, 411 Pujoe Street, Lake Charles
 McNeese State University, Luther E. Frazier Memorial Library, Ryan Street, Lake Charles
 Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux
 University of Southwestern Louisiana, Dupre Library, 302 East St. Mary Boulevard, Lafayette
 Lumcom, Library, Star Route 541, Chauvin

Mississippi

Harrison County Library, 14th and 21st Avenues, Gulfport
 Gulf Coast Research Lab., Gunter Library, 703 East Beach Drive, Ocean Springs

Alabama

Auburn University at Montgomery, Library, Taylor Road, Montgomery
 University of Alabama, 809 University Boulevard East, Tuscaloosa
 Mobile Public Library, 701 Government Street, Mobile
 Montgomery Public Library, 445 South Lawrence Street, Montgomery
 Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores
 Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island
 University of South Alabama, University Boulevard, Mobile

Florida

University of Florida Libraries, University Avenue, Gainesville
 Florida A&M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee
 Florida State University, Stroz Library,

Call Street and Copeland Avenue, Tallahassee
 Florida Atlantic University, Library, 20th Street, Boca Raton
 University of Miami Library, 4600 Rickenbacker Causeway, Miami
 University of Florida, Holland Law Center, Library, Southwest 25th Street and 2nd Avenue, Gainesville
 St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg
 West Florida Regional Library, 200 West Gregory Street, Pensacola
 Florida Northwest Regional Library System, 25 West Government Street, Panama City
 Leon County Public Library, 127 North Monroe Street, Tallahassee
 Lee County Library, 3355 Fowler Street, Fort Myers
 Charlotte-Glades Regional Library System, 2280 NW Aaron Street, Port Charlotte
 Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa
 Key Largo Public Library, 99551 No. 3 Overseas Highway, Key Largo
 Selby Public Library, 1001 Boulevard of the Arts, Sarasota
 Collier County Public Library, 650 Central Avenue, Naples
 Marathon Public Library, 3152 Overseas Highway, Marathon
 Monroe County Public Library, 700 Fleming Street, Key West.

In accordance with 30 CFR part 256, subpart B, three public hearings pertaining to these lease sales are scheduled to be held during the last 2 weeks of May 1992. Locations of the hearings will be Galveston, Texas; New Orleans, Louisiana; and Mobile, Alabama. The dates and times of these public hearings will be announced in the near future in a separate **Federal Register Notice**. The purpose of these public hearings is to provide the Department of the Interior and the Minerals Management Service with information from individuals, public and private groups, and Government agencies to further evaluate the potential effects of the proposed lease sales. Pertinent testimony and comments will be addressed in the final EIS for Sales 142 and 143.

The comment period for both the proposed notices of sale and the draft EIS closes July 6, 1992.

Dated: April 3, 1992.

Thomas Gemhofer,
 Associate Director for Offshore Minerals Management.

Approved:

Jonathan P. Deason,
 Director, Office of Environmental Affairs.
 [FR Doc. 92-8046 Filed 4-7-92; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-337]

Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus, Investigation

AGENCY: U.S. International Trade Commission

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 5, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SGS-Thomson Microelectronics, Inc. 1310 Electronics Drive, Carrollton, Texas 75006. A supplement was filed on March 18, 1992, and an amended complaint was filed on March 19, 1992. The complaint, as amended and supplemented, alleges violations of section 337 by reason of unlawful importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee of certain telecommunication chips and products containing same which allegedly infringe claims 1, 4, 10, 11 and 14-16 of U.S. Letters Patent 4,315,108, claims 6-9 and 13-14 of U.S. Letters Patent 4,061,886, and claims 1-4 and 6 of U.S. Letters Patent 4,446,436; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in

§ 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on March 31, 1992, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuit telecommunication chips and products containing same, including dialing apparatus, which allegedly infringe claims 1, 4, 10, 11 or 14–16 of U.S. Letters Patent 4,315,108, claims 6–9 or 13–14 of U.S. Letters Patent 4,061,886, or claims 1–4 or 6 of U.S. Letters Patent 4,446,436; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—SGS-Thomson Microelectronics, Inc., 1310 Electronics Drive, Carrollton, Texas 75006.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Winbond Electronics Corporation, No. 2, R&D Road VI, Science-Based Industrial Park, Hsinchu, Taiwan 30077.

Winbond Electronics North America Corporation, 3350 Scott Blvd., Building No. 20, Santa Clara, California 95054.

United Microelectronics Corp., 3 Industrial East 3rd Road, Science-Based Industrial Park, Hsinchu, Taiwan 30077.

Hualon Microelectronics Corp., No. 1, R&D Road IV, Science-Based Industrial Park, Hsinchu, Taiwan 30077.

Hualon Microelectronics Corp., 300 Montgomery Street, 3rd floor, San Francisco, California 94104.

Kingtel Telecommunication Corp., 12F1 #127 Nanking E Rd. Sec. 4, Taipei, Taipei City TW-10569.

North American Foreign Trade, 1115 Broadway, New York, New York 10010.

A&A International, Inc., 1200 One Tandy Center, Fort Worth, Texas 76102.

Conair Corporation, 150 Milford Road, East Windsor, New Jersey 08520.

Lonestar Technologies, Ltd., 920 S. Oyster Bay Road, Hicksville, New York 11801.

Spectra Merchandizing International, Inc., 3425 North Kimball, Chicago, Illinois 60618–5505.

Columbia Telecommunications Group, Inc., 395 Atlantic Avenue, East Rockaway, New York 11518.

(c) Juan Cockburn, Esq., Office of Unfair Import, Investigations, U.S. International Trade Commission, 500 E Street SW., room 401Q, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the name respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: April 1, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–8072 Filed 4–7–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–313 (Preliminary)]

Portable Seismographs from Canada Determination

On the basis of the record¹ developed

in the subject investigation, the Commission unanimously determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of portable seismographs,² provided for in subheading 9015.80.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Canada.

Background

On February 12, 1992, a petition was filed with the Commission and the Department of Commerce by GeoSonics Inc., Warrendale, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of portable seismographs from Canada. Accordingly, effective February 12, 1992, the Commission instituted countervailing duty investigation No. 701–TA–313 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 20, 1992 (57 FR 6127). The conference was held in Washington, DC, on March 4, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 30, 1992. The views of the Commission are contained in USITC Publication 2496 (March 1992), entitled "Portable Seismographs from Canada: Determination of the Commission in

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Portable seismographs are used by the mining, construction, and blasting industries to measure the ground and air vibrations produced by manmade blasting. A portable seismograph measures the basic components of manmade ground and air vibrations in compliance with seismograph standards established by the U.S. Bureau of Mines. The basic components and ranges of measurement are: Ground peak particle velocity (0.02 to 10 inches per second); ground motion frequency (2 to 200 Hz); direction of motion (3 orthogonal axis [L,T,V]); airblast level (100 to 140 dBL); airblast overpressure (1/10,000 to 1/100 psi); and airblast frequency (2 to 200 Hz). Earthquake, nuclear, and reflection/refraction seismographs are not included in the scope of this investigation.

Investigation No. 701-TA-313
(Preliminary) Under the Tariff Act of
1930, Together With the Information
Obtained in the Investigation."

Issued: March 31, 1992.

By Order of the Commission:

Kenneth R. Mason,
Secretary.

[FR Doc. 92-8073 Filed 4-7-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-302; Ancillary
Proceeding]

**Certain Self-Inflating Mattresses;
Commission Decision To Adopt a
Recommended Determination of No
Violation of Commission Interim Rule
210.5(b)**

AGENCY: U.S. International Trade
Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that
the Commission has determined to
adopt the recommended determination
(RD) of the presiding administrative law
judge (ALJ) in the above-captioned
proceeding, thereby determining that
neither complainant Cascade Designs,
Inc., nor its counsel has violated
Commission interim rule 210.5(b).

FOR FURTHER INFORMATION CONTACT:
Katherine M. Jones, Esq., Office of the
General Counsel, U.S. International
Trade Commission, telephone 202-205-
3097.

SUPPLEMENTARY INFORMATION: The
authority for the Commission's
determination is contained in section
337 of the Tariff Act of 1930 (19 U.S.C.
1337).

On August 29, 1990 the Commission
instituted this ancillary proceeding to
investigate the allegations of
respondents Goodway Corporation and
Gymwell Corporation that complainant
Cascade Designs, Inc. and its counsel
had violated rule 210.5 of the
Commission's Interim Rules of Practice
and Procedure. 19 CFR 210.5. The record
in this proceeding was closed after an
evidentiary hearing held before the
presiding ALJ on December 5-6, 1990.
On March 14, 1991, the ALJ issued his
RD finding that neither complainant nor
its counsel had violated interim rule
210.5, and certified the RD and the
record to the Commission.

In order to allow the parties to
express their views concerning the RD
prior to Commission disposition of the
proceeding, the Commission provided

the parties with the opportunity to file
exceptions to the RD, and proposed
alternative findings of fact and
conclusions of law. Exceptions and
proposed alternative findings of fact and
conclusions of law were filed by
respondents.

Having considered the RD, the
exceptions thereto, and the proposed
alternative findings of fact and
conclusions of law, as well as the entire
record in this proceeding, the
Commission determined to adopt the RD
finding that neither complainant nor its
counsel had violated Commission
interim rule 210.5 as the final
Commission determination in this
investigation.

Notice of the original investigation
was published in the **Federal Register** of
August 16, 1989 (54 FR 157). Notice of
the institution of the ancillary
proceeding was published in the **Federal
Register** of August 29, 1992. (55 FR 168).

Copies of the Commission's Order and
all other nonconfidential documents filed
in connection with this investigation are
available for inspection during official
business hours (8:45 a.m. to 5:15 p.m.) in
the Office of the Secretary, U.S.
International Trade Commission, 500 E
Street SW., Washington, DC 20436,
telephone 202-205-2000. Hearing-
impaired persons are advised that
information on the matter can be
obtained by contacting the
Commission's TTD terminal on 202-205-
2648.

Issued: April 1, 1992.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 92-8070 Filed 4-7-92; 8:45 am]

BILLING CODE 7020-02-M

[332-316]

**Shipbuilding Trade Reform Act of
1992; Likely Economic Effects of
Enactment**

AGENCY: United States International
Trade Commission.

ACTION: Change in scope and title of
investigation and extension of deadline
for submission of comments.

FOR FURTHER INFORMATION CONTACT:
Ms. Kathleen Lahey, Office of Industries
(202-205-3409), or Mr. Gerald Berg,
Office of Economics (202-205-3233), U.S.
International Trade Commission,
Washington, DC 20436.

SUMMARY: On March 25, 1992, the
Commission received a letter from the
House Committee on Ways and Means
requesting that the Commission expand

the scope of its investigation to take into
account amendments made to H.R. 2056,
the Shipbuilding Trade and Reform Act
of 1992, by the House Committee on
Merchant Marine and Fisheries. The
Committee on Ways and Means
requested that the Commission delay
the submission of its report to June 1,
1992, in order that it might have
sufficient time to undertake the
additional evaluation and analysis.

Background

The Commission received the initial
request from the Committee on Ways
and Means for an investigation under
section 332(g) of the Tariff Act of 1930
(19 U.S.C. 1332(g)) on October 30, 1991.
The Commission instituted the
requested investigation on November 19,
1991. After requesting the Commission
investigation and report, the Committee
on Ways and Means referred H.R. 2056
to the House Committee on Merchant
Marine and Fisheries. The Committee on
Merchant Marine and Fisheries held
hearings on the bill and reported it
favorably with amendments on March 6,
1992, retitled as the "Shipbuilding Trade
Reform Act of 1992."

The new letter from the Committee on
Ways and Means stated that both
committees had completed their
consideration of the bill and "intend to
pursue expeditious consideration of the
legislation by the full House." The letter
stated that the Committee on Ways and
Means would not seek any delay
pending receipt of the Commission's
study. The letter further stated that, "in
light of the continued uncertainty still
surrounding this legislation due largely
to the ongoing OECD negotiations," the
Commission's study "will be of
significant value to the Congress and the
public."

The Commission's notice of institution
of an investigation and the scheduling of
a public hearing was published in the
Federal Register of November 29, 1991
(56 FR 61049). A public hearing was held
on January 24, 1992, and interested
persons were given until February 4,
1992, to file any posthearing briefs or
other written statements. The
Commission has retitled its investigation
to reflect the fact that the bill is now
titled the "Shipbuilding Trade Reform
Act of 1992" (rather than "1991").

New Deadline for Written Statements

Interested persons are invited to
submit written statements concerning
the matters to be addressed in the
report. Such statements should focus on
the amendments made to the H.R. 2056
by the Committee on Merchant Marines
and Fisheries. To be assured of

consideration by the Commission, any such statements must be submitted to the Commission at the earliest practical date, but not later than April 20, 1992. All submissions should be addressed to the Secretary to the Commission at the Commission's Office in Washington, DC.

Any commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested persons.

Hearing impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on 202-205-2648.

Issued: April 1, 1992.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 92-8071 Filed 4-7-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-336]

Certain Single In-Line Memory Modules and Products Containing Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Fujitsu Limited and Fujitsu Microelectronics, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties,

unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on March 30, 1992.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: March 30, 1992.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 92-8068 Filed 4-7-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-336]

Certain Single In-Line Memory Modules and Products Containing Same; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents

on the basis of a settlement: OKI America, Inc. and OKI Electric Industry Company, LTD.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on April 1, 1992.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary of the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: April 1, 1992.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 92-8069 Filed 4-7-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-336]**Certain Single In-Line Memory Modules and Products Containing Same: Initial Determination Terminating Respondent on the Basis of Settlement Agreement****AGENCY:** U.S. International Trade Commission.**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Matsushita Electric Industrial Co., Ltd. and Matsushita Electric Corporation of America.**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on March 31, 1992.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: March 31, 1992.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 92-8074 Filed 4-7-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION**[Ex Parte No. 388 (Sub-No. 27)]****Intrastate Rail Rate Authority; Oregon****AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of recertification.**SUMMARY:** Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Oregon to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.**DATES:** Recertification will be effective May 8, 1992 and will expire May 7, 1997.**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660. [TDD for hearing impaired: (202) 927-5721].**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927-5721.]

Decided: March 31, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92-8056 Filed 4-7-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE**Notice of Consent Judgment in Action To Enjoin Violation of the Clean Air Act ("CAA")**In accordance with Departmental policy, 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that a Consent Decree in *United States v. Quality Wallcovering, Inc.*, Civil Action No. 92-1214(HAA), was lodged with the United States District Court for the District of New Jersey on March 20, 1992. TheConsent Decree provides for penalties for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the New Jersey State Implementation Plan ("SIP"), N.J.A.C. 7:27-16, concerning limitations on emissions from defendant Quality Wallcovering and enjoins defendant from further violations of the Act and SIP.The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Quality Wallcovering, Inc.*, D.O.J. Ref. No. 90-5-2-1-1519.

The Consent Decree may be examined at the Office of the United States Attorney, 970 Broad Street, room 502, Newark, New Jersey 07101; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 12078; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of \$3.00 (for copying costs) payable to Consent Decree Library.

Barry M. Hartman,
Acting Assistant Attorney General,
Environment and Natural Resources Division.
[FR Doc. 92-8038 Filed 4-7-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR**Employment and Training Administration****[TA-W-25, 737]****Leviton Manufacturing Cable Electric Products Division, Providence, Rhode Island; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 19, 1991 applicable to all workers of Cable Electric Products, Inc., in Providence, Rhode Island. The

certification notice was published in the *Federal Register* on June 28, 1991 (57 FR 29718).

At the request of the State Agency the Department reviewed the certification for Cable Electric Products, Inc., in Providence Rhode Island. New information received by the Department shows that Cable Electric Products, Inc., was dissolved on July 1, 1991 and that the parent company, Leviton Manufacturing, assumed control of the assets. The review shows that Leviton Manufacturing meets all the requirements for a successor-in-interest firm.

The amended notice applicable to TA-W-25,737 is hereby issued as follows:

All workers of Cable Electric Products, Inc., Providence Rhode Island or its successor-in-interest firm Cable Electric Products Division of Leviton Manufacturing in Providence, Rhode Island who became totally or partially separated from employment on or after April 8, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of April 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-8085 Filed 4-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26, 666; et al.]

Exxon Co., U.S.A., Exxon Corp., et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 11, 1992, applicable to all workers of Exxon Company, U.S.A. Onshore Exploration Division, Denver, Colorado; Midland Office, Midland, Texas and the Eastern Division Production Department, New Orleans, Louisiana. The Certification notice was published in the *Federal Register* on March 4, 1992 (57 FR 7794).

At the request of the State Agency the Department reviewed the subject certification. New information shows that the claimants' wages are being reported under a successor account called Exxon Corporation. Exxon Company, U.S.A., the previous account, went inactive on December 31, 1989. Therefore, in order to properly reflect the correct worker group, the Department has included the name of

the Exxon Corporation as the successor firm.

The amended notice applicable to TA-W-26, 666, TA-W-26, 772 and TA-W-26, 798 is hereby issued as follows:

All workers of Exxon Corporation (formerly Exxon Company, U.S.A.) Onshore Exploration Division, Denver, Colorado (TA-W-26, 666); the Midland Office, Midland, Texas (TA-W-26, 772); and the Eastern Division Production Department, New Orleans, Louisiana (TA-W-26, 798) who became totally or partially separated from employment on or after December 4, 1990 (TA-W-26, 666); December 31, 1990 (TA-W-26, 772) and January 21, 1991 (TA-W-26, 798), respectively, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of March 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-8086 Filed 4-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,730]

Halliburton Logging Services, Incorporated, Headquartered in Houston, TX and Operating at Various Locations

TA-W-26,728

Gulf Coast Division, headquartered in New Orleans, Louisiana and operating at various sites out of the following offices:

TA-W-26,728A Bossier City, LA.
TA-W-26,728B Houma, LA.
TA-W-26,728C Lafayette, LA.
TA-W-26,728D Laurel, MS.
TA-W-26,728E Tuscaloosa, AL.
TA-W-26,728F Lake Charles, LA.
TA-W-26,728G Victoria, TX.
TA-W-26,728H Beaumont, TX.
TA-W-26,728I Richmond, TX.
TA-W-26,728J Tyler, TX.
TA-W-26,728K Alice, TX.
TA-W-26,728L Dallas, TX.
TA-W-26,728M Corpus Christi, TX.
TA-W-26,728N Sonora, TX.
TA-W-26,728O Terminal, TX.

TA-W-26,731

Mid-Continent Division, headquartered in Oklahoma City, Oklahoma and operating at various sites out of the following offices:

TA-W-26,731B Pampa, TX.
TA-W-26,731C San Angelo, TX.
TA-W-26,731D Odessa, TX.
TA-W-26,731E Wichita Falls, TX.
TA-W-26,731F Hobbs, NM.
TA-W-26,731G Pauls Valley, OK.
TA-W-26,731H Shawnee, OK.
TA-W-26,731I Woodward, OK.
TA-W-26,731J Great Bend, KS.
TA-W-26,731K Liberal, KS.
TA-W-26,731L Fort Smith, AR.
TA-W-26,731M Homer City, PA.
TA-W-26,731N Meadville, PA.
TA-W-26,731O Mt. Pleasant, MI.

TA-W-26,731P Gate City, VA.
TA-W-26,731Q Parkersburg, WV.
TA-W-26,731R Duncan, OK.
TA-W-26,731S Enid, OK.
TA-W-26,731T Indiana, PA.
TA-W-26,731U Pittsburgh, PA.

TA-W-26,727

Halliburton Geodata, headquartered in Houston, Texas and operating at various other sites in the following states:

TA-W-26,727A Texas
TA-W-26,727B Louisiana
TA-W-26,727C Colorado
TA-W-26,727D Wyoming
TA-W-26,727E California
TA-W-26,727F Alaska

TA-W-26,729

Halliburton/Vann Systems, headquartered in Houston, Texas and operating at various other sites in the following states:

TA-W-26,729A Texas
TA-W-26,729B Alaska
TA-W-26,729C Mississippi
TA-W-26,729D New Mexico
TA-W-26,729E California
TA-W-26,729F Louisiana
TA-W-26,729G Wyoming
TA-W-26,729H Oklahoma

TA-W-26,732

Halliburton Logging Services, Incorporated, Austin Research Center, Austin, Texas

TA-W-26,732A

Halliburton Logging Services, Incorporated, Ft. Worth Manufacturing Plant, Ft. Worth, Texas

TA-W-26,732B

Halliburton Logging Services, Incorporated, Alvarado Special Tools Plant, Alvarado, Texas

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 6, 1992, applicable to all workers of Halliburton Logging Services, Inc., headquartered in Houston, Texas (TA-W-26,730) including the Gulf Coast and Mid-Continent Divisions and Halliburton Geodata and Halliburton/Vann Systems both headquartered in Houston, Texas; the Austin Research Center in Austin, Texas and the Ft. Worth Manufacturing Plant in Ft. Worth, Texas. The Certification notice was issued on March 6, 1992 and published in the *Federal Register* on March 25, 1992 (57 FR 10386).

At the request of the State Agency the Department is amending the subject certifications by canceling the Abilene, Texas location (TA-W-26,731A) of Halliburton Logging Services, Mid

Continent Division because the workers are currently certified under TA-W-26,433. In addition, the certification notice is being amended so as to include Halliburton Logging's Gulf Coast Division's locations of Alice, Texas; Dallas, Texas; Corpus Christi, Texas; Sonora, Texas; and Terminal, Texas and Halliburton Logging's Mid-Continent Division's locations of Duncan, Oklahoma; Enid, Oklahoma; Indiana, Pennsylvania; and Pittsburgh, Pennsylvania. Also included are the States where workers of Halliburton Geodata and Halliburton/Vann Systems operate.

The intent of the Department's certification is to include all workers of Halliburton Logging Services, Halliburton Geodata and Halliburton/Vann Systems who were adversely affected by increased import of crude oil and natural gas.

The amended notice applicable to TA-W-26,727 through TA-W-26,732B is hereby issued as follows:

All workers of Halliburton Logging Services, Inc., headquartered in Houston, Texas (TA-W-26,730) and operating at various locations out of the following cited offices; Halliburton Geodata and Halliburton/Vann Systems both headquartered in Houston, Texas and operating at various other sites in the following cited States who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974:

TA-W-26,728

Halliburton Logging Services, Gulf Coast Division, headquartered in New Orleans, Louisiana and operating at various sites out of the following offices:

TA-W-26,728A Bossier City, LA.
TA-W-26,728B Houma, LA.
TA-W-26,728C Lafayette, LA.
TA-W-26,728D Laurel, MS.
TA-W-26,728E Tuscaloosa, AL.
TA-W-26,728F Lake Charles, LA.
TA-W-26,728G Victoria, TX.
TA-W-26,728H Beaumont, TX.
TA-W-26,728I Richmond, TX.
TA-W-26,728J Tyler, TX.
TA-W-26,728K Alice, TX.
TA-W-26,728L Dallas, TX.
TA-W-26,728M Corpus Christi, TX.
TA-W-26,728N Sonora, TX.
TA-W-26,728O Terminal, TX.

TA-W-26,731

Halliburton Logging Services, Mid-Continent Division, headquartered in Oklahoma City, Oklahoma and operating at various sites out of the following offices:

TA-W-26,731B Pampa, TX.
TA-W-26,731C San Angelo, TX.
TA-W-26,731D Odessa, TX.
TA-W-26,731E Wichita Falls, TX.
TA-W-26,731F Hobbs, NM.
TA-W-26,731G Pauls Valley, OK.
TA-W-26,731H Shawnee, OK.

TA-W-26,731I Woodward, OK.
TA-W-26,731J Great Bend, KS.
TA-W-26,731K Liberal, KS.
TA-W-26,731L Fort Smith, AR.
TA-W-26,731M Homer City, PA.
TA-W-26,731N Meadville, PA.
TA-W-26,731O Mt. Pleasant, ML.
TA-W-26,731P Gate City, VA.
TA-W-26,731Q Parkersburg, WV.
TA-W-26,731R Duncan, OK.
TA-W-26,731S Enid, OK.
TA-W-26,731T Indiana, PA.
TA-W-26,731U Pittsburgh, PA.

TA-W-26,727

Halliburton Geodata, headquartered in Houston, Texas and operating at various other sites in the following states:

TA-W-26,727A Texas
TA-W-26,727B Louisiana
TA-W-26,727C Colorado
TA-W-26,727D Wyoming
TA-W-26,727E California
TA-W-26,727F Alaska

TA-W-26,729

Halliburton/Vann Systems, headquartered in Houston, Texas and operating at various other sites in the following states:

TA-W-26,729A Texas
TA-W-26,729B Alaska
TA-W-26,729C Mississippi
TA-W-26,729D New Mexico
TA-W-26,729E California
TA-W-26,729F Louisiana
TA-W-26,729G Wyoming
TA-W-26,729H Oklahoma

TA-W-26,732

Halliburton Logging Services, Incorporated, Austin Research Center, Austin, Texas

TA-W-26,732A

Halliburton Logging Services, Incorporated, Ft. Worth Manufacturing Plant, Ft. Worth, Texas

TA-W-26,732B

Halliburton Logging Services, Incorporated, Alvarado Special Tool, Plant, Alvarado, Texas

Signed at Washington, DC, this 31st day of March 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-8089 Filed 4-7-92; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of March 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for

adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,842; L & M Sportswear Co., Roseta, PA

TA-W-26,773; Fiesta Apparel, Inc., Hoboken, NJ

TA-W-26,726; Chicago Pneumatic Tool Co, Utica, NY

TA-W-26,879; Christy Fashions, Glen Lyon, PA

TA-W-26,816; Park Drop Forge Co., Cleveland, OH

TA-W-26,811; Knox Knitting Col, Inc., Creston, NC

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,954; UAW Family Education Center, Onaway, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,944; Manville Sales Corp., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,750; Ford Motor Co., Tulsa Glass Plant, Tulsa, OK

The investigation revealed that criterion (3) has not been met for the workers in the float glass operation of Ford Motor Co., Tulsa Glass Plant in Tulsa, Oklahoma. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,802; First Seismic Corp., Headquarters, Houston, TX and Operating out of the following

offices: TA-W-26,799; Oklahoma City, OK, TA-W-26,800; Dallas, TX, TA-W-26,801; New Orleans, LA, TA-W-26,803; Midland, TX, TA-W-26,804; Denver, CO

U.S. imports of crude oil declined absolutely and relative to domestic shipments in 1991 compared to 1990. Also U.S. shipments and exports of dry natural gas increased in 1991 compared to 1990 and that imports did not increase relative to domestic shipments and consumption.

TA-W-26,791; Union Texas, Petroleum Corp., Houston, TX

U.S. imports of crude oil declined absolutely and relative to domestic shipments in the first eleven months of 1991 compared to the same period in 1990.

TA-W-26,797; East Texas Pipe Service, Hughes, Springs, TX

U.S. imports of crude oil declined absolutely and relative to domestic shipments in the first eleven months of 1991 compared to the same period in 1990.

TA-W-26,853; D & R Cedar, Forks, WA

U.S. imports of shakes and shingles decreased in 1991 compared to 1990.

TA-W-26,882; Barnhart Drilling, Inc., Riverton, WY

U.S. imports of crude oil declined absolutely and relative to domestic shipment in Jan-Sept 1991 compared with the same period in 1990.

TA-W-26,758; Santa Fe Drilling Co., Houston, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,899; Taunton Engineering C., Taunton, MA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,794; Conagra Flour Mill, Blackwell, OK

The investigation revealed that the workers of Conagra Flour Mill, Blackwell, OK were laid off due to a decline in export sales of wheat flour from the plant and not due to imports of articles produced by the firm. A loss of export sales is not a basis for certification under terms of the Trade Act of 1974.

TA-W-26,823; T-M Vacuum Products, Inc., Tri-R-Tool Co., Riverton, NJ

The investigation revealed that criterion (2) has not been met. Sales or

production did not decline during the relevant period as required for certification.

TA-W-26,872; National-Oilwell, Garland, TX

U.S. imports of oil and gas field machinery were not important when compared to U.S. shipments and exports.

TA-W-26,806; Halliburton Services, Bradford, PA

U.S. imports of crude oil declined absolutely and relative to domestic shipments in 1991 compared to 1990. Also U.S. shipment and export of dry natural gas increased in 1991 compared to 1990 and that imports did not increase relative to domestic shipment and consumption.

TA-W-26,821 & TA-W-26,822; Schlumberger Well Services, Corpus Christi, TX and Alice, TX

U.S. imports of crude oil declined absolutely and relative to domestic shipments in 1991 compared to 1990. Also U.S. shipment and export of dry natural gas increased in 1991 compared to 1990 and that imports did not increase relative to domestic shipment and consumption.

Affirmative Determinations

TA-W-26,828; The American Fabrics Co, Bridgeport, CT

A certification was issued covering all workers separated on or after February 3, 1991.

TA-W-26,834; Dexter Shoe Co., Milo, ME

A certification was issued covering all workers separated on or after January 14, 1991.

TA-W-26,951; Somerset Knitting Mills, Philadelphia, PA

A certification was issued covering all workers separated on or after October 13, 1991.

TA-W-26,820; RMI Sodium Co., Ashtabula, OH

A certification was issued covering all workers separated on or after January 3, 1991.

TA-W-26,809; Kelsey-Hays Corp., Mt. Vernon, OH

A certification was issued covering all workers separated on or after January 13, 1991.

TA-W-26,756; RMI Titanium Co., Metals Reduction Plant, Ashtabula, OH

A certification was issued covering all workers separated on or after October 1, 1991.

TA-W-26,762; A.O. Smith Electrical Products Co., Upper Sandusky, OH

A certification was issued covering all workers separated on or after January 126, 1992.

TA-W-26,750; Ford Motor Co., Tulsa Glass Plant, Tulsa, OK

A certification was issued covering all workers engaged in the production of side and rear window operations for Ford Motor Co., Tulsa Glass Plant in Tulsa, OK on or after December 19, 1990.

TA-W-26,841; Jodi Lynn Apparel Co., Inc., Nazareth, PA

A certification was issued covering all workers separated on or after January 28, 1991.

I hereby certify that the aforementioned determinations were issued during the month of March 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: April 1, 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-8088 Filed 4-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26, 575]

N.H. Industries a.k.a. Shirey Co., Inc., Greenville, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment on January 29, 1992, applicable to all workers of N.H. Industries, Greenville, Texas. The notice was published in the Federal Register on February 14, 1992 (57 FR 5472).

At the request of the State Agency, the Department reviewed the subject certification. New information from the company shows the Shirey Company was dissolved on March 31, 1991 and its operations were taken over by the newly formed N.H. Industries who produce the same product with the same workforce as the Shirey Company. Other information shows that the Shirey Company, Inc., meets all the requirements for a predecessor-in-interest firm to N.H. Industries in Greenville, Texas. Therefore, the certification is amended to properly reflect the correct worker group. The amended notice applicable to TA-W-26,575 is hereby issued as follows:

All workers of the Greenville, Texas plant of N.H. Industries, previously known as the Shirey Company, Greenville, Texas who became totally or partially separated from employment on or about October 16, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of March 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-8087 Filed 4-7-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Announcement of Proposed Non-Competitive Grant Award

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the Contact Center, Inc. of Lincoln, Nebraska, for the provision of specialized services under the authority of the Job Training Partnership Act (JTPA).

DATES: It is anticipated that this grant award will be executed by April 25, 1992, and will be funded for 1 year. Submit comments by 4:45 p.m. (Eastern Time), on April 23, 1992.

ADDRESSES: Submit comments regarding this proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Charlotte Adams; Reference FR-DAA-92-003.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to the Contact Center, Inc. of Lincoln, Nebraska. Contact Center, Inc., will provide JTPA information to individuals calling the Contact Center hotline in response to general project plus public service announcements and follow up with written information where appropriate. Funds for this activity are authorized by the Job Training Partnership Act, as amended, title IV—Federally Administered Programs. The proposed funding is approximately \$48,000 for twelve months.

Issued at Washington, DC, on March 20, 1992.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 92-7979 Filed 4-7-92; 8:45 am]

BILLING CODE 9510-30-M

Office of Work-Based Learning, Federal Committee on Apprenticeship; Public Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-462; 5 U.S. App. 1) of October 5, 1972, notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on April 28, 1992, from 8:30 a.m.-4:30 p.m.; April 29, from 8:30 a.m.-12 noon at the U.S. Department of Labor, room N-4437 A-D, 200 Constitution Avenue, NW, Washington DC 20210.

The agenda for the meeting will include:

Tuesday, April 28

8:30 a.m. Call Meeting to Order

Introduction of Members and DOL officials

Committee Chair's Report and Plans for the meeting

Approval of Minutes

Report from Bureau of Apprenticeship and Training

Apprenticeship Information Management System

General Accounting Office Report on Apprenticeship

Presentation of Sub-Committee Reports

- Traditional Apprenticeship Programs

- Non-Traditional Apprenticeship Programs

- Underrepresented Groups

- Quality of Apprenticeship Programs

- National Training System

- Apprenticeship Operations

- Legislation

- Apprentice OSHA Safety Training

Report of State Apprenticeship Directors Survey System

Strategic Plan for Promoting Apprenticeship

National Training Standards

4 p.m. Public Comments

4:30 p.m. Recess to reconvene April 29, 1992, at 8:30 a.m.

Note: Lunch will be taken at 12 noon to 1 p.m.

Wednesday, April 29

8:30 a.m. Resume Presentation of Sub-Committee Reports

Immigration—Employment and Training Considerations

Purpose of FCA Fund

FCA Members' Projects Relating to Apprenticeship

Future FCA Actions and Considerations

Other Business/Administrative Matters
Plans for Next Meeting

12 Noon Adjourn

Note: The order of agenda items may be revised due to time constraints and availability of topic speakers.

Members of the public are invited to attend the proceedings.

Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing a copy to the Executive Director at any time. Papers received on or before April 22, 1992, will be included in the record of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time should be limited to no more than 5 minutes. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the Executive Director should be addressed as follows: Mr. Minor R. Miller, Office of Work-Based Learning, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-4649, Frances Perkins Building, Washington, DC 20210; telephone number (202) 535-0540.

Signed at Washington, DC, this 31st day of March 1992.

Roberts T. Jones,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 92-8083 Filed 4-7-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (92-21)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency

Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by May 8, 1992. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0042), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-9897.

Reports

Title: Information Collection from the Public in Support of the NASA Acquisition Process.

OMB Number: 2700-0042.

Type of Request: Revision.

Frequency of Report: As required.

Type of Respondent: Individuals or households, state or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Number of Respondents: 166,045.

Responses per Respondent: 2.

Annual Responses: 332,091.

Hours per Response: 32.

Annual Burden Hours: 10,624,820.

Abstract-Need/Uses: Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission. It also includes reporting requirements under NASA contracts.

Dated: April 2, 1992.

Donald J. Andreotta,
Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 92-8051 Filed 4-7-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of a public meeting to be held in Ashlawn North of the Vista International Hotel, Washington, DC.

DATES: Thursday, April 23, 1992 9 a.m.-3 p.m.; Friday, April 24, 1992 9 a.m.-12 p.m.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, future research, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT:

Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues.

The meeting will be open to the public. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Anyone wishing to submit comments prior to the meeting, should do so by April 17, and they will be included in the minutes. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street NW., suite 300, Washington, DC 20005.

Signed at Washington, DC, this 1st day of April 1992.

Barbara C. McQuown,
Director, National Commission for Employment Policy.

[FR Doc. 92-8084 Filed 4-7-92; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Solo Recitalists Fellowships Section) to the National Council on the Arts will be held on April 29, 1992 from 9 a.m.-5:30 p.m. and April 30 from 9 a.m.-4:30 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 30 from 3 p.m.-4:30 p.m. The topics will be policy review and guidelines discussion.

The remaining portions of this meeting on April 29 from 9 a.m.-5:30 p.m. and

April 30 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 30, 1992.

Yvonne Sabine,

Director, Council and Panel Operations,
National Endowment for the Arts.

[FR Doc. 92-8037 Filed 4-7-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting and request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) to provide the ACMUI with status reports on medical use rulemakings, and request ACMUI guidance on certain regulatory and administrative issues.

The NRC staff will provide the ACMUI with status reports on a petition for the rulemaking regarding the practice of radiopharmacy; the implementation

of the Quality Management Rule: the administration of byproduct material or radiation from byproduct material to pregnant or nursing women; clarification of training requirements for authorized users; and the expansion of the ACMUI. The staff will request guidance on NRC acceptance of training provided by the Royal College of Physicians and Surgeons of Canada to physicians who have applied to be authorized users under 10 CFR 35.100 and 200; abnormal occurrence criteria; and broad scope licensing.

DATES: The meeting will be held at 8:30 a.m. on May 7 and 8, 1992.

ADDRESSES: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia. Submit comments to the Secretary of the Commission, ATTN: Advisory Committee Management Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION, CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6-H-3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-504-4317.

SUPPLEMENTARY INFORMATION:

Abnormal Occurrence Criteria

The Quality Management Rule revised the criteria for medical use misadministrations. In response, the Office for Analysis and Evaluation of Operational Data (AEOD) is reviewing the existing criteria for selection of misadministration reports as abnormal occurrences.

Broad Scope Licensing

NRC staff is currently developing guidance that will revise the Standard Review Plan for licensing medical broad scope programs. The guidance includes model licenses and revised license conditions. The staff will provide an update on this guidance.

Royal College of Physicians and Surgeons of Canada, Acceptance of Training and Experience

The committee will examine training and experience criteria provided by the Royal College of Physicians and Surgeons of Canada for Radiology and Nuclear Medicine Programs. NRC has received applications regarding physicians who have received their training in a program approved by the Royal College of Physicians and Surgeons of Canada, and who now want to become authorized users on an NRC license.

American College of Nuclear Physicians/Society of Nuclear Medicine (ACNP/SNM) Radiopharmaceutical Petition

On June 15, 1989, the ACNP/SNM filed a petition with NRC addressing five issues related to the preparation and use of radiopharmaceuticals. On August 23, 1990, NRC published the Interim Final Rule addressing two of the issues in the petition. The remaining issues in that petition are: compounding radiopharmaceuticals, the use of byproduct material in medical research, and use of radiolabeled biologics. Currently, NRC regulations are silent on these issues; however, NRC licensees may perform these activities through license conditions. The NRC staff will present an update on these issues.

Implementation of the Quality Management Rule

NRC staff will discuss the implementation of the Quality Management Rule, which became effective on January 27, 1992.

Administration of Byproduct Material to Pregnant or Nursing Patients

The NRC staff will present an update on issues and recommendations concerning unintended radiation doses or dosages to an embryo, fetus, or nursing infant, resulting from administration of radiopharmaceuticals or radiation to pregnant or nursing patients.

Clarification of Training and Experience Requirements for Authorized Users

The NRC staff will discuss the training and experience required to become an "authorized user" on an NRC medical use license as outlined in 10 CFR 35.920 and Regulatory Guide 10.8.

Status Report on the Expansion of ACMUI

In 1992, the NRC will replace three current members of the committee, and add three new positions. Calls for nomination will be published in the Federal Register in April, or early May 1992.

Conduct of Meeting

Barry Siegel, M.D., will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons may submit written comments by sending a reproducible copy to the Secretary of the Commission (see "ADDRESSES" heading). Comments must be received by April 15, 1992, to ensure consideration at the meeting. The

transcript of the meeting will be kept open until May 30, 1992, for inclusion of written comments. It is not necessary to resubmit written comments that were submitted in response to the Federal Register notices mentioned in this meeting notice.

2. Persons who wish to make oral statements should inform Mr. Camper in writing by April 25, 1992. Statements must pertain to topics at hand. The Chairman will rule on requests to make oral statements. Opportunity for members of the public to make oral statements will be based on the order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral statements may be supplemented by detailed written statements, for the record. Rulings on who may speak, the order of presentations, and time allotments may be obtained by calling Mr. Camper, 301-504-3417, between 9 a.m. and 5 p.m. EST, on April 30, 1992.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555, on or about June 6, 1992.

5. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a), the Federal Advisory Act (5 U.S.C. App) and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

For the Nuclear Regulatory Commission,
John C. Hoyle,

Advisory Committee Management Officer.
[FR Doc. 92-8004 Filed 4-7-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 42d meeting on April 22 (beginning at 1 p.m.), 23 and 24 (beginning at 8:30 a.m.), 1992, room P-110, 7920 Norfolk Avenue, Bethesda, MD. The entire meeting will be open to public attendance. Notice of this meeting was previously published in the Federal Register on Wednesday, March 18, 1992 (57 FR 9433).

The agenda for the subject meeting shall be as follows:

A. Periodic meeting with NRC Commissioners to discuss topics of mutual interest.

B. Discussion of the Pathfinder Nuclear Power Plant decommissioning, including lessons learned and residual levels of contamination. Also, briefing and discussion regarding the status of decommissioning plans at Rancho Seco, Ft. St. Vrain, Shoreham and other Nuclear Power Stations.

C. Review an expedited rulemaking effort concerning on-site storage of low-level waste.

D. Prepare the next four month plan of ACNW activities for the Commission's information.

E. Complete efforts to investigate the feasibility of a systems analysis approach to reviewing the overall high-level waste program.

F. Prepare a report on a recent review of draft NUREG-1406, NRC High-Level Radioactive Waste Research Program Plan.

G. Briefing on the status of New York's constitutional challenge to the Low-Level Radioactive Waste Policy Amendments Act of 1985.

H. Discuss the current status of EPA's high-level radioactive waste standards and NRC staff comments regarding the latest version.

I. Briefing on SECY 92-060, Low-Level Radioactive Waste Performance Assessment Development Program Plan.

J. Discuss issues related to volcanology with respect to the proposed High-Level Waste repository.

K. Briefing by Louisiana Energy Services on their private uranium enrichment facility plans.

L. Review a Technical Position on Alternate Concentration Limits for Uranium Mill Tailings Sites.

M. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far

in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: April 2, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92-8053 Filed 4-7-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-237 and 50-249]

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted a request from Commonwealth Edison Company (CECO, the licensee) to withdraw CECO's application for a proposed amendment to Facility Operating License Nos. DPR-19 and DPR-25, issued to the licensee for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois. Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing was published in the Federal Register on June 13, 1990 (55 FR 23997).

The proposed amendment would alter thirteen instrumentation tables for each unit to incorporate enhancements from the BWR Standard Technical Specifications (STS) which result in consistency of table format and technical content.

By letter dated February 18, 1992, the licensee withdrew the application for the proposed amendments. The Commission has considered the licensee's request and has determined that permission to withdraw the January 16, 1990, application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated January 16, 1990, and (2) the staff's letter dated March 31, 1992.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 31st day of March.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager, Project Directorate III-2,
Division of Reactor Projects—III/IV/V,
Office of Nuclear Reactor Regulation.

[FR Doc. 92-8047 Filed 4-7-92; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

Shortage of Operating Funds for a Disaster in Arkansas

As a result of the Secretary of Agriculture's disaster designation S-581 for counties in the State of Arkansas, the Small Business Administration (SBA) is accepting economic injury disaster loan applications from eligible nonfarm small business concerns. However, due to SBA's present severe shortage of operating funds for the disaster program for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of its ability to continue to accept or process disaster loan applications or make disbursements on disaster loans until additional funds are available.

Dated: March 31, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-8099 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas #7593 & #7594]

Arkansas (and Contiguous Counties in Louisiana); Declaration of Disaster Loan Area

Union County and the contiguous counties of Ashley, Bradley, Calhoun, Columbia, and Ouachita in the State of Arkansas and Claiborne, Morehouse, and Union Counties in the State of Louisiana constitute an Economic Injury Disaster Loan Area due to damages caused by severe storms and a tornado

which occurred on March 9, 1992. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on December 23, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

Notice: Due to SBA's present shortage of operating funds for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of our ability to continue to accept or process disaster loan applications or make disbursements on loans until additional funds are available.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 23, 1992.

Patricia Saiki,
Administrator.

[FR Doc. 92-8100 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas #7595, #7596, #7597]

District of Columbia (and Contiguous Counties in Virginia and Maryland); Declaration of Disaster Loan Area

The District of Columbia and the contiguous counties of Arlington and Fairfax and the Independent City of Alexandria in the State of Virginia and Montgomery and Prince Georges Counties in the State of Maryland constitute an Economic Injury Disaster Loan Area due to damages caused by a major water main break which occurred on January 14, 1992, along the L and M Street corridors between 20th and 21st Streets in downtown Washington, DC. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on December 23, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

Notice: Due to SBA's present shortage of operating funds for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of our ability to continue to accept or process disaster loan

applications or make disbursements on loans until additional funds are available.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: March 23, 1992.

Patricia Saiki,
Administrator.

[FR Doc. 92-8101 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

Shortage of Operating Funds for a Disaster in Iowa

As a result of the Secretary of Agriculture's disaster designation S-579 for counties in the States of Iowa and contiguous counties in the State of Illinois, Minnesota, Missouri, and Nebraska, the Small Business Administration (SBA) is accepting economic injury disaster loan applications from eligible nonfarm small business concerns. However, due to SBA's present severe shortage of operating funds for the disaster program for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of its ability to continue to accept or process disaster loan applications or make disbursements on disaster loans until additional funds are available.

Dated: March 30, 1992.

Bernard Kulik,
Assistant Administrator for Disaster Assistance.

[FR Doc. 92-8102 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Des Moines, will hold a public meeting from 1 p.m.-3 p.m. on Thursday, April 30, 1992, at the Corporate headquarters of Casey's General Stores, located at One Convenience Boulevard, Ankeny, Iowa, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Conrad E. Lawlor, District Director, U.S. Small Business Administration, room 749 Federal Building, 210 Walnut Street, Des Moines, Iowa, 50309, (515) 284-4567.

Dated: April 1, 1992.

Caroline J. Beeson,
Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-8096 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2556]

Mississippi; (And Contiguous Counties in Alabama & Arkansas); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 20, 1992, I find that the counties of Lauderdale, Sharkey, Washington, and Yalobusha in the State of Mississippi constitute a disaster area as a result of damages caused by severe storms and tornadoes on March 9-10, 1992. Applications for loans for physical damage may be filed until the close of business on May 18, 1992, and for loans for economic injury until the close of business on December 21, 1992, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office; One Baltimore Place, suite 300, Atlanta, Georgia 30308.

Or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bolivar, Calhoun, Clarke, Grenada, Humphreys, Issaquena, Jasper, Kemper, Lafayette, Neshoba, Newton, Panola, Sunflower, Tallahatchie, and Yazoo in the State of Mississippi; Choctaw and Sumter Counties in the State of Alabama; and Chicot and Desha Counties in the State of Arkansas may be filed until the specified date at the above location.

The interest rates are:

| For physical damage: | Percent |
|----------------------------------------------------------------------------------------|---------|
| Homeowners with credit available elsewhere..... | 8.000 |
| Homeowners without credit available elsewhere..... | 4.000 |
| Businesses with credit available elsewhere..... | 6.500 |
| Businesses and non-profit organizations without credit available elsewhere..... | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere..... | 8.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere..... | 4.000 |

The number assigned to this disaster for physical damage is 25612 and for economic injury the numbers are 759900 for Mississippi; 760000 for Alabama; and 760100 for Arkansas.

Notice: Due to SBA's present shortage of operating funds for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of our ability to continue to accept or process disaster loan applications or make disbursements on loans until additional funds are available.

[Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006]

Dated: March 25, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-8096 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, will hold a public meeting at 12 noon on Thursday, April 30, 1992, in the reception area of Stan Stephens, Governor, State of Montana, Capitol Building, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John R. Cronholm, District Director, U.S. Small Business Administration, 301 South Park, Drawer 10054, Helena, Montana 59626-0054, (406) 449-5381.

Dated: March 20, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-8107 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small business Administration Region IV Advisory Council, located in the geographical area of Charlotte, will hold a public meeting from 10 a.m. to 3 p.m. on Wednesday, April 29, 1992 at the Charlotte Apparel Center, 200 North College Street, Charlotte, North Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Gary Keel, District Director, U.S. Small Business Administration, 200 North College Street, suite A 2015, Charlotte, North Carolina 28202, (704) 344-6561.

Dated: April 1, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-8095 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

Shortage of Operating Funds for a Disaster in Oklahoma

As a result of the Secretary of Agriculture's disaster designation S-582 for counties in the State of Oklahoma and contiguous counties in the States of Arkansas, Kansas, and Texas, the Small Business Administration (SBA) is accepting economic injury disaster loan applications from eligible nonfarm small business concerns. However, due to SBA's present severe shortage of operating funds for the disaster program for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of its ability to continue to accept or process disaster loan applications or make disbursements on disaster loans until additional funds are available.

Dated: March 31, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-8103 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

Shortage of Operating Funds for a Disaster in Texas

As a result of the Secretary of Agriculture's disaster designation S-578 for counties in the State of Texas, the Small Business Administration (SBA) is accepting economic injury disaster loan applications from eligible nonfarm small business concerns. However, due to SBA's present severe shortage of operating funds for the disaster program for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of its ability to continue to accept or process disaster loan applications or make disbursements on disaster loans until additional funds are available.

Dated: March 30, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-8104 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

Shortage of Operating Funds for a Disaster in Texas

As a result of the Secretary of Agriculture's disaster designation S-580 for counties in the State of Texas, the Small Business Administration (SBA) is accepting economic injury disaster loan applications from eligible nonfarm small business concerns. However, due to SBA's present severe shortage of operating funds for the disaster program for the current fiscal year (through

September 30, 1992), SBA cannot provide assurance of its ability to continue to accept or process disaster loan applications or make disbursements on disaster loans until additional funds are available.

Dated: March 30, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-8105 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

Shortage of Operating Funds for a Disaster in Texas

As a result of the Secretary of Agriculture's disaster designation S-583 for counties in the State of Texas and contiguous counties in the State of Oklahoma, the Small Business Administration (SBA) is accepting economic injury disaster loan applications from eligible nonfarm small business concerns. However, due to SBA's present severe shortage of operating funds for the disaster program for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of its ability to continue to accept or process disaster loan applications or make disbursements on disaster loans until additional funds are available.

Dated: March 31, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-8108 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2555]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 20, 1992, I find that the counties of Harris and Liberty in the State of Texas constitute a disaster area as a result of damages caused by severe storms and flooding beginning on March 4, 1992.

Applications for loans for physical damage may be filed until the close of business on May 19, 1992, and for loans for economic injury until the close of business on December 21, 1992, at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, Texas 76155.

Or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of

Brazoria, Chambers, Fort Bend, Galveston, Hardin, Jefferson, Montgomery, Polk, San Jacinto, and Waller in the State of Texas may be filed until the specified date at the above location.

The interest rates are:

| | Percent |
|----------------------------------------------------------------------------------------|---------|
| For physical damage: | |
| Homeowners with credit available elsewhere..... | 8.000 |
| Homeowners without credit available elsewhere..... | 4.000 |
| Businesses with credit available elsewhere..... | 6.500 |
| Businesses and non-profit organizations without credit available elsewhere..... | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere..... | 8.500 |
| For Economic injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere..... | 4.000 |

The number assigned to this disaster for physical damage is 255506 and for economic injury the number is 759800.

Notice: Due to SBA's present shortage of operating funds for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of our ability to continue to accept or process disaster loan applications or make disbursements on loans until additional funds are available. (Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 24, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-8111 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Lubbock, will hold a public meeting from 10:30 a.m. to 12 noon on Thursday, April 23, 1992, in the Conference Room of the U.S. Small Business Administration Office, 1611 10th Street, suite 200, Lubbock, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Walter Fronstin, District Director, U.S. Small Business Administration, 1611 10th Street, suite 200, Lubbock, Texas 79401, (806) 743-7462 or 1-800-676-1005.

Dated: April 1, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-8094 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2554]

Vermont (and Contiguous Counties in New Hampshire); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 18, 1992, I find that the counties of Caledonia, Orange, Washington, and Windsor in the State of Vermont constitute a disaster area as a result of damages caused by heavy rain, ice jams, and flooding which occurred on March 11, 1992. Applications for loans for physical damage may be filed until the close of business on May 18, 1992, and for loans for economic injury until the close of business on December 18, 1992, at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations. In addition, applications for economic injury loans from small business located in the contiguous counties of Addison, Bennington, Chittenden, Essex, Lamoille, Orleans, Rutland, and Windham in the State of Vermont, and Grafton and Sullivan Counties in the State of New Hampshire may be filed until the specified date at the above location.

The interest rates are:

| | |
|----------------------------------------------------------------------------------------|--------|
| For Physical Damage: | |
| Homeowners with Credit Available Elsewhere..... | 8.000% |
| Homeowners without Credit Available Elsewhere..... | 4.000% |
| Businesses with Credit Available Elsewhere..... | 6.500% |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere..... | 4.000% |
| Others (Including Non-Profit Organizations) with Credit Available Elsewhere..... | 8.500% |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere..... | 4.000% |

The number assigned to this disaster for physical damage is 255406 and for economic injury the numbers are 759100 for Vermont and 759200 for New Hampshire.

Notice: Due to SBA's present shortage of operating funds for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of our ability to continue to accept or process disaster loan

applications or make disbursements on loans until additional funds are available.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 20, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-8109 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2554; Amendment #1]

Vermont; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated March 23, 1992, to the President's major disaster declaration of March 18, to include Chittenden County in the State of Vermont as a disaster area as a result of damages caused by heavy rain, ice jams, and flooding which occurred on March 11, 1992.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Franklin and Grande Isle in the State of Vermont may be filed until the specified date at the previously designated locations.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 18, 1992, and for economic injury until the close of business on December 18, 1992.

Notice: Due to SBA's present shortage of operating funds for the current fiscal year (through September 30, 1992), SBA cannot provide assurance of our ability to continue to accept or process disaster loan applications or make disbursements on loans until additional funds are available. (Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 26, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-8106 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, will hold a public meeting beginning Wednesday, May 6, at 1 p.m. and ending on Thursday, May 7, 1992, at 12 noon. The meeting will be held at the

West Virginia Rehabilitation Center, 1 Barron Drive, Institute, West Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Marvin Shelton, District Director, U.S. Small Business Administration, P.O. Box 1608, Clarksburg, West Virginia 26302-1608, (304) 623-5631.

Dated: April 1, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-8097 Filed 4-7-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1600]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Fire Protection; Meeting

The U.S. Safety of Life at Sea Working Group on Fire Protection will conduct an open meeting on April 29, 1992 at 10 a.m. in room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of the meeting will be to prepare for discussions anticipated to take place at the 37th Session of the International Maritime Organization (IMO) Subcommittee on Fire Protection (FP), scheduled for May 18-22, 1992.

The meeting will focus on the fire safety of commercial vessels. Specific discussion areas include: Aspects for fuel line failure, code of safety for dynamically supported craft, casualty records, fire-fighting systems, fire test procedures, guidelines for performance and testing criteria and surveys of foam concentrates, provisions for helicopter facilities on ships, phasing out of halons, passenger vessel safety, preventing and mitigating marine pollution incidents, open top container ships, smoke control.

Members of the public may attend up to the seating capacity of the room. For further information regarding the meeting of the SOLAS Working Group on Fire Protection (April 29, 1992) contact Mr. Jack Booth at (202) 267-2997.

Dated: March 26, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92-8035 Filed 4-7-92; 8:45 am]

BILLING CODE 4710-70-M

[Public Notice 1601]

Shipping Coordinating Committee Council and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on June 4, 1992, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of the meeting is to finalize preparations for the 68th Session of Council and 36th Session of Technical Cooperation Committee of the International Maritime Organization (IMO) which is scheduled for June 15-19, 1992, at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and the draft U.S. positions. Among other things, the items of particular interest are:

- Reports of the IMO Committees and training institutions.
- Review of the technical co-operation activities of the Organization.
- Consideration of amendments to the provisions for elections to Council.
- Relations with United Nations and other organizations.
- Administrative and financial matters.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard (G-CI), 2100 Second Street, SW., Washington, DC 20593 or by calling: (202) 267-2548.

Dated: March 24, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92-8036 Filed 4-7-92; 8:45 am]

BILLING CODE 4710-70-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at the Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Greater Rockford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part

158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 8, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon, room 258, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frederick C. Ford, A.A.E., Executive Director of Aviation of the Greater Rockford Airport Authority at the following address: Greater Rockford Airport Authority, Greater Rockford Airport, Rockford, Illinois 61125-0063.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Greater Rockford Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT:

Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon, room 258, Des Plaines, Illinois 60018, (312) 694-7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at the greater Rockford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 23, 1992, the FAA determined that the application to impose a PFC submitted by the Greater Rockford Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 17, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: May 1, 1992.

Proposed charge expiration date: April 30, 1996.

Total estimated PFC revenue: \$1,200,000.00.

Brief description of proposed project(s):

1. Complete extension of runway 6.
2. Construct taxiway to runway 6.
3. Acquire parcel P.
4. Overlay runway 18/36.
5. Environmental assessment for airport layout plan.

6. Overlay two taxiways and GA apron and extend box culvert.
7. Update part 150 study.
8. Acquire snow removal equipment.
9. Construct 6/24 parallel taxiway.
10. Extend runway 18 625 feet.
11. Land acquisition, phase 1.
12. Purchase snow removal equipment.
13. Overlay runway 12/30.
14. Land acquisition, phase 2.
15. Purchase snow removal equipment.
16. Acquire land in approach to runways 24 and 30.
17. Purchase snow and fire equipment.
18. Install security access control system.
19. Relocate baggage claim and expand terminal.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi operators.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Greater Rockford Airport Authority.

Issued in Des Plaines, Illinois, on March 24, 1992.

Henry A. Lamberts,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 92-8018 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Akron-Canton Regional Airport, Akron, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 8, 1992.

ADDRESSES: Comments on this application may be mailed or delivered

in triplicate to the FAA at the following address: Federal Aviation Administration, Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frederick J. Krum, Director of the Akron-Canton Regional Airport, at the following address: 5400 Lauby Road, NW., North Canton, Ohio 44720.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Akron-Canton Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT:

Mr. Peter Serini, Manager, Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111, (313) 487-7300. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 2, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Akron-Canton Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve the application, in whole or in part, no later than June 30, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: July 1, 1992.

Proposed charge expiration date: June 15, 1997.

Total estimated PFC revenue: \$8,045,000.

Brief description of proposed project:

1. Waterline Installation.
2. Gate Area Widening.
3. Airfield Maintenance & ARFF Building Expansion.
4. Engine Generator.
5. ARFF Vehicle.
6. Baggage Make-up Area Expansion & Renovation.
7. Snow Removal Equipment.
8. Taxiway/Runway Overlay 1/19.
9. Terminal Building Expansion.
10. Taxiway/Runway Overlay 5/23.

Class or classes of air carriers which the public agency has requested not

be required to collect PFCs: Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may upon request, inspect the application, notice and other documents germane to the application in person at the Akron-Canton Regional Airport Authority.

Issued in Des Plaines, Illinois, on March 24, 1992.

Henry A. Lamberts,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 92-8019 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-92-13]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of petition for exemption; reopening of comment period.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 28, 1992.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. 26793, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A),

800 Independence Avenue, SW.,
Washington, DC 20591; telephone (202)
267-3132.

FOR FURTHER INFORMATION CONTACT:

Mr. C. Nick Spithas, Office of
Rulemaking (ARM-1), Federal Aviation
Administration, 800 Independence
Avenue SW., Washington, DC 20591;
telephone (202) 267-9704.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1992, a notice of
disposition of the petition of Delta
Airlines was published in the *Federal
Register* for comment; that comment
period closed April 1, 1992.

Subsequent to that application, the
FAA received a request to reopen the
comment period. A reopening of the
comment period will not be detrimental
to the petitioner since it received a grant
of exemption for a 90-day period.
Therefore, the FAA has determined that
the comment period may be extended an
additional 20 days to afford interested
parties the opportunity to comment.

Summary of the Petition for Exemption

[Docket No. 26793]

Petitioner: Delta Airlines.

Section of the FAR Affected: 14 CFR
121.310(f)(5).

Description of Relief Sought/

Disposition: To allow petitioner to
operate the MD-11 with a door
installed in the partition between the
first class and business class
passenger compartments. Grant,
March 4, 1992, Exemption No. 5413,
until June 15, 1992 to allow Delta to
operate the MD-11 under the
conditions of Exemption No. 5413
during the consideration of public
comments. Exemption No. 5413 is the
part 121 operating rule counterpart to
Exemption No. 5405, issued to
McDonnell Douglas Corporation on
February 11, 1992, from 14 CFR
25.813(e), to permit installation of a
door in the partition between the first
class and business class passenger
compartments in the MD-11 airplane.

Issued in Washington, DC, on April 1, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

[FR Doc. 92-8017 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-92-14]

**Petitions for Exemption; Summary of
Petitions Received; Dispositions of
Petitions Issued**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of petitions for
exemption received and of dispositions
of prior petitions.

SUMMARY: Pursuant to FAA's
rulemaking provisions governing the
application, processing, and disposition
of petitions for exemption (14 CFR part
11), this notice contains a summary of
certain petitions seeking relief from
specified requirements of the Federal
Aviation Regulations (14 CFR chapter I),
dispositions of certain petitions
previously received, and corrections.
The purpose of this notice is to improve
the public's awareness of, and
participation in, this aspect of FAA's
regulatory activities. Neither publication
of this notice nor the inclusion or
omission of information in the summary
is intended to affect the legal status of
any petition or its final disposition.

DATES: Comments on petitions received
must identify the petition docket number
involved and must be received on or
before April 28, 1992.

ADDRESSES: Send comments on any
petition in triplicate to: Federal Aviation
Administration, Office of the Chief
Counsel, Attn: Rule Docket (AGC-10),
Petition Docket No. _____, 800
Independence Avenue, SW.,
Washington, DC 20591.

The petition, any comments received,
and a copy of any final disposition are
filed in the assigned regulatory docket
and are available for examination in the
Rules Docket (AGC-10), room 915G,
FAA Headquarters Building (FOB 10A),
800 Independence Avenue, SW.,
Washington, DC 20591; telephone (202)
267-3132.

FOR FURTHER INFORMATION CONTACT:

Mr. C. Nick Spithas, Office of
Rulemaking (ARM-1), Federal Aviation
Administration, 800 Independence
Avenue, SW., Washington, DC 20591;
telephone (202) 267-9704.

This notice is published pursuant to
paragraphs (c), (e), and (g) of § 11.27 of
part 11 of the Federal Aviation
Regulations (14 CFR part 11).

Issued in Washington, DC, on April 1, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 21802.

Petitioner: Sowell Aviation Company,
Inc.

Sections of the FAR Affected: 14 CFR
141.65.

Description of Relief Sought: To
extend Exemption No. 4551 which
allows Sowell Aviation Company, Inc.,
to continue to recommend graduates of
its Federal Aviation Administration
(FAA) approved certification course for

flight instructor and airline transport
pilot certificates and ratings, without
taking the FAA written test, in
accordance with the provisions of
subpart D of part 141.

Docket No.: 24605.

Petitioner: Executive Jet New York.

Sections of the FAR Affected: 14 CFR
91.511(a) and 135.165(b).

Description of Relief Sought: To
extend and amend Exemption No. 4961,
which allows petitioner to operate
certain aircraft in extended overwater
operations using one long-range
navigation system and one high-
frequency communication system. In
addition, the exemption would include
certain additional aircraft.

Docket No.: 24761.

Petitioner: Executive Jet Aviation, Inc.

Sections of the FAR Affected: 14 CFR
91.511(a)(2).

Description of Relief Sought: To
extend Exemption No. 4709B which
allows Executive Jet Aviation, Inc., to
operate its turbojet-powered aircraft,
equipped with a single Long Range
Navigation System (LRNS) and a single
High Frequency radio, in extended
overwater operations.

Dispositions of Petitions

Docket No.: 23753.

Petitioner: Saudia Arabia.

Sections of the FAR Affected: 14 CFR
61.2, 63.2 and 67.12.

Description of Relief Sought/

Disposition: To extend Exemption No.
3923, as amended, which provides relief
from §§ 61.2, 63.2 and 67.12 of the
Federal Aviation Regulations (FAR) to
the extent that Saudia pilots may be
issued U.S. pilot certificates with type
ratings if required, instrument ratings,
flight engineer certificates and medical
certificates.

Grant, March 26, 1992, Exemption No.
3923F.

Docket No.: 26056.

Petitioner: Accelerated Ground
Training, Inc.

Sections of the FAR Affected: 14 CFR
61.56(b)(1); 61.57(c) and (d); 61.58(c)(1)
and (d); 61.63(d)(2) and (d)(3);
61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and
(e)(2); appendix A of part 61; and
appendix H of part 121.

Description of Relief Sought/

Disposition: To extend exemption No.
5169 which permits Accelerated Ground
Training, Inc., to use FAA-approved
simulators to meet certain training and
testing requirements of §§ 61.56(b)(1);
61.57 (c) and (d); 61.58 (c)(1) and (d);
61.63 (d)(2) and (d)(3); 61.67(d)(2); 61.157
(d)(1), (d)(2), (e)(1), and (e)(2); Appendix

A Part 61; and Appendix H of Part 121 of the FAR.

Grant, March 26, 1992, Exemption No. 5169A.

Docket No.: 26223.

Petitioner: Airbus Service Company, Inc.

Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (d)(2) and (d)(3); 61.67(d)(2); 61.157 (d)(1), (d)(2), (e)(1), and (e)(2); appendix A of part 61; and appendix H of part 121.

Description of Relief Sought/

Disposition: To permit Airbus Service Company, Inc./Training Center (Airbus) to use FAA/approved simulators to meet certain training and testing requirements of §§ 61.56(b)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (d)(2) and (d)(3); 61.67(d)(2); 61.157 (d)(1), (d)(2), (e)(1), and (e)(2); appendix A part 61; and appendix H of part 121 of the FAR.

Grant, March 25, 1992, Exemption No. 5432.

Docket No.: 26463.

Petitioner: Wilderness Aviation, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/

Disposition: To allow properly trained pilots employed by Wilderness Aviation, Inc., to convert the cabins of certain of its aircraft operated under FAR Part 135 from passenger to cargo configurations, and the reverse, by removing and replacing passenger seats when such aircraft are specifically designed for that purpose.

Grant, March 26, 1992, Exemption No. 5431.

Docket No.: 26538.

Petitioner: A.C.E. Flyers, Inc., dba JayHawk Air, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/

Disposition: To permit pilots employed by JayHawk Air, Inc., to remove and replace the passenger seats of aircraft operating under part 135.

Grant, March 26, 1992, Exemption No. 5430.

Docket No.: 26755.

Petitioner: Continental Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.314.

Description of Relief Sought/

Disposition: To permit a 6 month extension in the compliance time for the retrofit of Class D cargo compartment liners in Airbus Industrie Model A300 airplanes.

Grant, March 20, 1992, Exemption No. 5425.

Docket No.: 26767.

Petitioner: Continental Micronesia, Inc.

Sections of the FAR Affected: 14 CFR 121.358.

Description of Relief Sought/

Disposition: To permit Continental Micronesia, Inc., to operate its entire fleet of ten Boeing 727(B-727) and six McDonnell-Douglas DC-10 (DC-10) airplanes without those airplanes being equipped with approved windshear equipment.

Partial Grant, March 26, 1992, Exemption No. 5429.

Docket No.: 26801.

Petitioner: Express Airlines One, Inc.

Sections of the FAR Affected: 14 CFR 135.169(d).

Description of Relief Sought/

Disposition: To permit a 30-day extension in the compliance time for the retrofit of Class C cargo compartment liners in Saab Model SF340A airplanes.

Grant, March 20, 1992, Exemption No. 5424.

Docket No.: 26813.

Petitioner: Continental Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.314.

Description of Relief Sought/

Disposition: To permit a 30-day extension in the compliance time for the retrofit of Class D cargo compartment liners in Boeing Model 727-100 airplanes.

Grant, March 19, 1992, Exemption No. 5423.

[FR Doc. 92-8016 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

[Docket No. WPDA-1]

City of New York; Application for a Waiver of Preemption Determination Fire Department Regulations Concerning Pickup/Delivery Transportation of Flammable and Combustible Liquids and Flammable and Compressed Gases

AGENCY: Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT).

ACTION: Public notice of reopening of comment period.

SUMMARY: The City of New York (City) has applied for a waiver of preemption, under the Hazardous Materials Transportation Act (HMTA), as to certain provisions of the City's Fire Department Fire Protection Directives (FPDs). These regulatory provisions concern the transportation of flammable and combustible liquids and flammable

and compressed gases for pickup or delivery within the City and are set forth in full within appendix A to RSPA's November 15, 1991 Public Notice and Invitation to Comment, 56 FR 58126, 58128-30. This notice reopens the comment period on the City's application to provide an opportunity for interested parties to comment on the remarks which U.S. Senator Alfonse M. D'Amato (R-N.Y.) made to RSPA during the March 25, 1992 public hearing of the Subcommittee on Transportation and Related Agencies of the Senate Appropriations Committee, as well as two other matters.

DATES: Comments received on or before April 20, 1992, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. These further comments may address only the three specific matters discussed below (including comments and rebuttal comments on the same matters received and docketed prior to publication of this notice); commenters may not raise or discuss other issues.

ADDRESSES: The City's waiver application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001. Further comments on the three matters discussed below may be submitted to the Dockets Unit at the above address, and should include the Docket Number (WPDA-1). Three copies are requested. A copy of each comment must also be sent to Grace Goodman, Esq., Asst. Corporation Counsel, Law Department, The City of New York, 100 Church Street, room 6F41, New York, NY 10007; John J. Collins, Esq., ATA Litigation Center, American Trucking Associations, 2200 Mill Road, 6th Floor, Alexandria, VA 22314; and Timothy L. Harker, Esq., The Harker Firm, 5301 Wisconsin Ave., NW., suite 740, Washington, DC 20015. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Ms. Goodman and Messrs. Collins and Harker at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001 (Tel. No. 202-366-4400).

I. Background

On October 9, 1991, the City of New York submitted an application for a waiver of preemption as to requirements set forth in 24 separate sections or subsections of FPDs 3-76, 5-63, 6-76 and 7-74. With one exception, these requirements were among those which RSPA determined to be preempted in Inconsistency Ruling 22 (IR-22), 52 FR 46574 (Dec. 8, 1987); correction, 52 FR 49107 (Dec. 29, 1987), and in the RSPA Administrator's Decision on Appeal, IR-22(A), 54 FR 26698 (June 23, 1989). In an October 29, 1991 letter, the City further advised RSPA that on October 18, 1991, the United States District Court for the Eastern District of New York had issued an order confirming that the City has acknowledged preemption of its requirements, in *National Paint & Coatings Ass'n, Inc. v. City of New York*, No. CV 84-4525 (ERK). The City's waiver application (without its exhibits) was reproduced as Appendix A to the November 15, 1991 public notice. The Federal court's October 18, 1991 Order was reproduced as appendix B to the November 15, 1991 notice.

In accordance with the dates specified in the November 15, 1991 notice, the initial comment period on the City's application expired on December 13, 1991, and a rebuttal comment period expired on January 17, 1992. However, several comments supporting and opposing the City's application were received and docketed after January 17, 1992. Therefore, the rebuttal comment period was extended through March 13, 1992.

II. Matters on Which Additional Comments May Be Submitted

(1) Appropriations Committee Hearing Remarks

Sen. D'Amato submitted comments in support of the City's application in a March 12, 1992 letter. That letter is reproduced in Appendix A to this notice. On March 25, 1992, after the (reopened) period for rebuttal comments had ended, Sen. D'Amato delivered additional remarks concerning the City's application for a waiver of preemption to a panel of RSPA officials appearing before a public hearing of the Senate Appropriations Committee's Subcommittee on Transportation and Related Agencies. At the conclusion of the hearing, RSPA's Administrator thanked Sen. D'Amato for his remarks and assured him that RSPA was carefully weighing all sides of the issue. Thereafter, Mr. Clifford J. Harvison, President of National Tank Truck Carriers, Inc. (NTTC), engaged Sen. D'Amato in a discussion during which

Mr. Harvison referred to comments which NTTC and others had jointly submitted in this proceeding.

RSPA is extending the comment period to allow interested parties to respond to Sen. D'Amato's additional remarks during the committee hearing. The substance of Sen. D'Amato's remarks follows:

Sen. D'Amato urged RSPA to decide the City's waiver application as soon as possible. He asked when RSPA expected to make its decision and whether there was opposition to the application for a waiver.

Sen. D'Amato asked RSPA to commit to a stay of preemption until it acted on the City's application, stating that a waiver would not prejudice anyone. He suggested that, if preemption were not stayed, people would begin to operate under allegedly less restrictive requirements and later argue that they should be allowed to continue. He said that lives could be lost, and the City's standard can be justified in many ways.

Sen. D'Amato stated his belief that public safety justified a waiver of preemption. He suggested that the May 1991 gasoline truck fire in the Bronx (in which five people died) might have been worse if the truck had carried twice as much gasoline, and he mentioned that firefighters were in support of the present limitations.

Sen. D'Amato asked about HMTA's required findings of equivalent safety and no unreasonable burden on commerce, and stated he found no problem as to satisfying the finding of safety. He suggested that an office analysis of whether larger trucks permitted fewer trips to be made, and resulted in fewer accidents, was far different than actually driving next to a larger tank truck. He questioned whether RSPA might err in the direction of unrestricted license for larger trucks and compromise safety by placing too much emphasis on burdens of commerce. He also suggested that the length of time that these regulations had been in effect established that there was no unreasonable burden on commerce.

Sen. D'Amato stated that the City's requirement that tanks have compartments was appropriate to a high-density area where trucks stopped and made deliveries, even if compartments were not necessary for open highway travel. He stressed that RSPA should allow local jurisdictions to decide whether to permit 8,000 gallon tank trucks, and he added that it would be a mistake to be a big brother telling local jurisdictions what is best for them.

Responding comments may address Sen. D'Amato's March 12, 1992 letter as well as his March 26, 1992 remarks. Such comments should be submitted based upon the foregoing summary. The official transcript of those remarks, which will not be available for some time, will be included in the docket in this matter.

(2) Information on Compressed Gases

The City's application for waiver of preemption, and the responding

comments, contain very little discussion addressed to compressed gases. Indeed, the Compressed Gas Association has stated that "[t]he City's main concern * * * does not relate to transportation," but rather a desire to prohibit "bulk storage facilities in the city" for compressed gases. Unlike the treatment of flammable and combustible liquids, the submitted materials contain little or no information on such matters as: The quantities or types of compressed gas transported for pickup and delivery in the City; the distances of such shipments; the (potential) demand for, and feasibility of, tank pickup and delivery of compressed gases in the City (and any change in use of compressed gases in cylinders resulting therefrom); actual accidents or other problems (and the results thereof) involving the transportation of compressed gas in the City and elsewhere; the burdens on commerce imposed by the City's regulations; and expected circumstances if RSPA does or does not waive preemption of the City's regulations.

In accordance with 49 CFR 107.219(b), all interested parties are invited to submit further comments on the City's regulations concerning transportation of compressed gas.

(3) Whether FPD 7-74 Section 3-1 Has Been Revised

The requirement of FPD 7-74 section 3-1 is quoted in the City's application (at p. 6) as follows: "[Gasoline] may be discharged by the gravity method only." The reason for bracketed language is explained at pp. 26-27:

The Fire Department's regulations as presently written require all tank trucks delivering flammable liquids to unload their product solely by the gravity discharge method, rather than using any kind of pump. Upon review, the Department has decided to revise this regulation slightly. * * * Therefore, the Fire Department has revised its enforcement policy and will be revising the text of the regulation itself, so that it will henceforth apply only to deliveries of gasoline.

There is nothing in the record to indicate that this revision has taken place; the City's January 16, 1992 reply comments state at pp. 28-29 that "the City's regulations themselves are being changed to permit pump unloading for products other than gasoline."

In accordance with 49 CFR 107.219(b), all interested parties are invited to submit comments as to (1) whether FPD 7-74 section 3-1 has been revised in accordance with the intentions stated in the City's application and reply comments, and (2) what action, if any, RSPA should take on the City's

application for a waiver of preemption of FPD 7-74 section 3-1 if such revision has not taken place.

III. Further Comments

All further comments on the three matters discussed above should address:

- (1) Whether the specified City regulations afford an equal or greater level of protection to the public than is afforded by the requirements of HMTA or regulations issued under the HMTA;
- (2) Whether those requirements unreasonably burden commerce, and
- (3) Whether RSPA should grant the waiver request if it makes affirmative findings in issues (1) and (2).

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for waiver of preemption found at 49 CFR 107.215-107.225.

Issued in Washington, DC, on April 2, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety,

Mr. Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

Re: Docket No. WPDA-1.

March 12, 1992.

Dear Mr. Roberts:

I am writing in support of New York City's application for a Waiver of Preemption pursuant to section 112(d) of the Hazardous Materials Transportation Uniform Safety Act of 1990 and for a temporary Waiver pending your final determination.

New York City has presented well documented evidence in its application that its existing regulations on the transportation of flammable and combustible liquids and flammable and compressed gases afford a greater level of protection to New York City residents when compared to the requirements of the HMTA or regulations issued thereunder.

Equally, New York City has shown that its requirements do not unreasonably burden commerce. The City's experience has shown that the few pennies extra it costs per gallon of product is borne willingly by New York City Consumers. Such a small sum does not constitute an "unreasonable burden" on commerce, particularly when compared to the safety benefits which New York City regulations confer upon its residents.

Indeed, the City's regulations are critically important in protecting the public from the potentially catastrophic consequences of a hazardous materials accident. It is my opinion that the City has met both standards for the Research and Special Programs Administration to grant a Waiver of Preemption. I, therefore, urge your favorable consideration of New York City's request.

In enacting the 1990 amendment to the HMTA, Congress provided for uniform regulations in certain areas in order to increase safety throughout the nation. But Congress also provided the Waiver of Preemption, even though this would disrupt absolute uniformity, for localities that can demonstrate that their safety needs require higher standards in order to achieve the same level of safety as the rest of the nation. New York City has shown that it is such a locality.

Pending the issuance of the final decision, I also urge that New York City's request for a temporary stay of preemption from March 15, 1992 until the final decision is issued, be granted.

Thank you for your assistance in this matter.

Sincerely,

Alfonse M. D'Amato,

United States Senator.

[FR Doc. 92-8001 Filed 4-7-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 2, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0030.

Form Number: POD 1890.

Type of Review: Extension.

Title: Certification of Bill From Undertaker.

Description: This form is used when application is made by the funeral home for the funeral expenses of a deceased postal depositor. This form is completed by a relative of the deceased depositor certifying that the bill submitted by the funeral home is correct. Entitlement to the funds are based on this data to insure proper payment.

Respondents: Individuals or households.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per

Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3 hours.

Clearance Officer: Jacqueline R. Perry, (301) 436-8453, Financial Management Service, 3361-L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 92-8048 Filed 4-7-92; 8:45 am]

BILLING CODE 4810-35-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 2, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0718.

Form Number: IRS Form 941-M.

Type of Review: Extension.

Title: Employer's Monthly Federal Tax Return.

Description: Form 941-M is used by certain employers to report payroll taxes on a monthly rather than quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as required are notified by the District Director that they must file Form 941-M monthly.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Responses/Recordkeepers: 12,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 14 hours, 21 minutes.

Learning about the law or the form: 12 minutes.

Preparing, copying, assembling, and sending the form to the IRS: 26 minutes.

Frequency of Response: Monthly.

*Estimated Total Reporting/
Recordkeeping Burden:* 179,880 hours.

Clearance Officer: Garrick Shear,
(202) 535-4297, Internal Revenue
Service, room 5571, 1111 Constitution
Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf,
(202) 395-6880, Office of Management
and Budget, room 3001, New Executive
Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.
[FR Doc. 92-8049 Filed 4-7-92; 8:45 am]

BILLING CODE 4930-01-M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on April 28 and 29, 1992, of the following debt management advisory committee: Public Securities Association, Treasury Borrowing Advisory Committee.

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides

for a working session on April 28 and the preparation of a written report to the Secretary of the Treasury on April 29, 1992.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest require that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an

advisory committee under Public Law 92-463.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by section 552(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: April 1, 1992.

Jerome H. Powell,

Assistant Secretary (Domestic Finance).

[FR Doc. 92-7991 Filed 4-7-92; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 68

Wednesday, April 8, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:45 a.m., Tuesday, March 31, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.
Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-8232 Filed 4-6-92; 11:48 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 21, 1992.

PLACE: 2033 K St., N.W., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- Application of the Commodity Exchange Inc. for contract designation in Dubai Sour Crude Oil Futures
- Application of the Chicago Board of Trade for contract designation in Clean Air Futures
- Application of the New York Cotton Exchange for contract designation in Cotton No. 2 Straddle Options
- Program Review, 2nd quarter, FY 1992

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-8233 Filed 4-6-92; 11:48 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, April 24, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.
Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-8234 Filed 4-6-92; 11:48 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Friday, April 24, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.
Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-8235 Filed 4-6-92; 11:48 am]
BILLING CODE 6351-01-M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 9471, March 18, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m. Wednesday, March 25, 1992.

CHANGES IN THE MEETING: The following topic was added to the agenda during the closed portion of the meeting.

FHLBank of Des Moines' Benefits Equalization Plan. The above matter is exempt under one or more of subsections (c)(6) and (c)(9)(B) of title 5 of the United States Code, 5 U.S.C. (c)(6) and (c)(9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.
J. Stephen Britt,
Executive Director.

[FR Doc. 92-8230 Filed 4-6-92; 11:47 am]
BILLING CODE 6725-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 6, 13, 20, and 27, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Weeks of April 6

Friday, April 10

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Safety Light Corporation, *et al.* (Bloomsburg, Pennsylvania, site decontamination)

Week of April 13—Tentative

Thursday, April 16

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 20—Tentative

Monday, April 20

10:00 a.m.

Briefing on Proposed Update of Source Term, Release Timing, Definition of Releases into Containment, and TID-14844 (Public Meeting)

Tuesday, April 21

1:30 a.m.

Briefing on Progress of Design Certification Review and Implementation (Public Meeting)

Wednesday, April 22

10:00 a.m.

Briefing on NRC Activities Regarding Nuclear Safety and Safeguards in the Former Soviet Union and Eastern Europe (Public Meeting)

Friday, April 24

10:00 a.m.

Periodic Briefing on Progress of Resolution of Generic Safety Issues (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

1:30 p.m.

Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

Week of April 27—Tentative

Wednesday, April 29

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has at yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE

INFORMATION: William Hill (301)
504-1661.

Dated: April 3, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-8243 Filed 4-6-92; 11:48 pm]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (closed portion), 2:30 p.m. (open portion), Tuesday, April 21, 1992.

PLACE: Offices of the Corporation, Fourth Floor Board Room, 1615 M Street, N.W., Washington, D.C.

STATUS: The first part of the meeting from 1:00 p.m. to 2:30 p.m. will be closed to the public. The open portion of the meeting will commence at 2:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 2:20 p.m.):

1. President's Report.
2. Insurance Project in Poland.
3. Insurance Project in Saudi Arabia.
4. Claims Report.
5. Information Reports.
6. Approval of 2/18/92 Minutes (Closed Portion).

FURTHER MATTERS TO BE CONSIDERED (Open to the public 2:30 p.m.).

1. Approval of 2/18/92 Minutes (Open Portion).

2. Notice to Board of Changes to OPIC Country List.

3. Information Reports.

4. Recommendation for meeting through end of September 1992.

CONTACT PERSON FOR INFORMATION:

Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 457-7007.

Dated: April 3, 1992.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 92-8191 Filed 4-6-92; 8:56 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published on April 7, 1992].

STATUS: Open meeting.

PLACE: 450 Fifth Street, N.W., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, April 2, 1992.

CHANGE IN THE MEETING: Additional items.

The following additional item will be considered at an open meeting on Friday, April 10, 1992, at 9:00 a.m.

Consideration of whether to issue a release adopting Rule 419, which governs securities

offerings registered under the Securities Act of 1933 by blank check companies, including the requirement to place offering proceeds and securities in an escrow or trust account until a business or merger prospect meeting specified criteria is located and identified, provide complete information about such acquisition to prospective investors, and provide investors with the right to obtain a refund of deposited funds; (2) the adoption of Rule 15g-8, which prohibits any trading transactions in securities in a Rule 419 escrow or trust account; and (3) the amendment of Rule 174 to require prospectus delivery by dealers for 90 days following release of the Rule 419 escrow or trust account. For further information, please contact, Richard P. Konrath at (202) 272-2589.

Commissioner Schapiro, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Luparello at (202) 272-2100.

Dated: April 6, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-8284 Filed 4-6-92 3:50 pm]

BILLING CODE 8010-01-M

42 CFR Part 100.1

Wednesday
April 8, 1992

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 50, 219, 221, 236, 241, and 248

**Prepayment of a HUD-Insured Mortgage
by an Owner of Low Income Housing;
Interim Rule**

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50, 219, 221, 236, 241, and
248

[Docket No. R-92-1513; FR-2978-I-02]

RIN 2501-AB14

Prepayment of a HUD-Insured
Mortgage by an Owner of Low Income
Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements and makes effective HUD's procedures and standards for administering subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act, entitled the "Low Income Housing Preservation and Resident Homeownership Act of 1990" ("LIHPHA"), which repeals and replaces the Emergency Low Income Housing Preservation Act of 1987 ("ELIHPA"). This rule creates a permanent and comprehensive program which preserves privately-owned low income housing projects while not unduly restricting the owners, mortgage prepayment rights. In localities where there is an adequate supply of low income housing, prepayment of the mortgage would not otherwise undermine public policy objectives set forth in the statute, and prepayment would not result in a material increase in the economic hardship of the current tenants, owners of projects subject to low income affordability restrictions may terminate these restrictions and prepay their HUD-insured mortgages or terminate their mortgage insurance contracts. In areas where the supply of low income housing is inadequate, the low income affordability restrictions must be maintained on the projects for their remaining useful life, but owners may receive a fair market return on their investment through the receipt of incentives provided by HUD or through the transfer of the property to other entities which agree to continue the low income affordability restrictions. This rule provides an opportunity for homeownership of eligible low income housing projects by the tenants through resident homeownership programs. It also encourages the transfer of low income housing projects to nonprofit organizations and State and local government entities, by giving these entities the first opportunity to purchase available projects.

DATES: Effective date: May 8, 1992. The effective date of this interim rule may be postponed if the Department is unable, on or before that date, to publish a companion document, the final Guidelines for Determining Appraisals of Preservation Value under the Low Income Housing Preservation and Resident Homeownership Act of 1990.

Comment due date: All written comments must be received on or before June 8, 1992.

ADDRESSES: Submit written comments to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Standard Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Telephone, voice (202) 708-2300; TDD, (202) 708-4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in the interim rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

On May 2, 1991, the Department of Housing and Urban Development (the "Department" or "HUD") published a proposed rule at 56 FR 20262. The purpose of the proposed rule was to establish policies and procedures for implementing LIHPHA and to solicit public comments in response to the Department's proposal. This interim rule responds to the public comments received by the Department in reaction to the proposed rule. The interim rule, as published herein, is made effective as of the date indicated.

Discussion of Public Comments and
Changes Made in the Interim Rule

A discussion of the public comments and modifications made in response to the public comments and as a result of additional HUD consideration, follows.

General Overview of Commenters and
the Major Issues

During the sixty-day public comment period for the proposed rule, 256 sets of comments, comprising approximately 1,500 pages, were received from 185 different commenters. Approximately 23% of the commenters were nonprofit organizations. The nonprofits were composed of local groups, national foundations, lobbying organizations, and trade associations. Approximately 38% of the nonprofits submitting comments are organized on the national level. The response received from State and local governments was also large, with these entities representing about 16% of the commenters. Another 10% of the commenters were tenants, both individual tenants and tenant organizations, while owners made up 6% of the total commenters. Attorneys representing owners, tenants, developers, governments and nonprofits, made up approximately 11% of the commenters. Forty percent of the comments received from attorneys were from legal aid organizations. The remaining comments were submitted by management organizations, housing advocates, brokers, lenders, investors, consultants, developers and an accountant. Comments were also received from members of Congress. Many of the sets of comments were submitted jointly by a number of different individuals and/or organizations. The Department has not included in the foregoing breakdown each of the entities and individuals who jointly submitted comments; in most instances the joint commenters consisted of entities or individuals of the same type and with the same interests as the entity or individual under whose name the comments were submitted.

The following is a list of the primary issues raised by the commenters:

(1) Section 241.1060—Whether the section 241(f) equity and acquisition loan terms and amortization periods should be extended to 40 years or remain at 20 years;

(2) Section 248.101—Whether projects receiving flexible subsidy or rent supplement assistance should be included in the definition of eligible low income housing;

(3) Section 248.101—Whether the related party rule was interpreted too broadly so as to exclude a number of relationships between buyers and sellers, thus unduly restricting the transfer of projects;

(4) Section 248.157—Regarding the appropriate level and timing for an earnest money deposit;

(5) Section 248.157—How priority purchasers should be ranked, if at all;

(6) Section 248.157—Whether imposition of a twelve month marketing period for certain priority purchasers is proper; and

(7) Section 248.121—Whether owners are guaranteed an eight percent annual authorized return.

The Department's resolution of each of these significant issues, as well as other issues identified by the public commenters, is addressed in the following discussion.

Section 248.1 (Purpose)

Three commenters, a non-profit organization, a State government, and a law firm objected to the purposes of LIHPHA, as stated in this section of the proposed rule. The primary objection made by the commenters concerned including the facilitation of resident homeownership as the fourth purpose of the rule. One commenter also submitted its own list of objectives and suggested that these be substituted for those of the Department. Upon considering these comments, HUD has decided that this section of the rule should remain unchanged.

The primary objection raised by one of the commenters was that Congress considered and rejected HUD's proposal promoting conversion to resident homeownership as the principal means of preserving low income housing and therefore homeownership should not be listed as an objective of the preservation program. Another commenter stated that resident homeownership should be promoted only in certain markets and circumstances and should not be the key purpose of the rule.

HUD recognizes that Congress did not intend that homeownership be the only means of preservation, but also believes that tenant empowerment through homeownership is a viable preservation alternative. This alternative was recognized by Congress when it named the authorizing legislation the "Low Income Housing Preservation and Resident Homeownership Act of 1990," and, therefore, the Department believes that homeownership should be listed as one of the four purposes referenced in this provision. The preamble to the proposed rule recognizes that the "basic purpose" of the rule is to balance low income housing preservation with the right of owners to prepay their mortgages. Minimizing tenant displacement and facilitating resident homeownership are additional purposes listed in this section. The Department's position is that adding resident homeownership as one of four objectives of the rule does not

circumvent Congress, intent. Additionally, by stating that homeownership is one of the objectives, HUD is by no means declaring that homeownership is the only means of preservation or that it is suitable in all situations. The Department acknowledges that resident homeownership is not workable in all cases.

The commenter, who provided its own list of objectives, suggested that the goals of the rule should be to: (1) Permanently preserve eligible low income housing; (2) maximize tenant participation in preservation; (3) encourage the sale of housing to nonprofits; and (4) ensure full participation by local governments. While the rule is clearly designed to promote all of the foregoing, HUD believes that the purposes, as stated in the proposed rule, provide a more balanced view of the rule's intentions than do those proposed by the commenter. Therefore, this section of the proposed rule has not been amended.

Section 248.5 (Election to Proceed Under Subpart B or C)

Eleven comments were received by the Department regarding the right of owners to preserve their choice of proceeding under either subpart B or subpart C of this rule. The two primary issues raised by these comments concerned the increase in size of the eligible low income housing universe that could opt to file a plan of action under subpart C and the time frame in which owners have to exercise their option.

Paragraph (c) of this section permits owners of projects which became eligible low income housing prior to January 1, 1991, and who submitted a notice of intent to the Department prior to that date, to elect which subpart they wish to proceed under. To determine which projects may exercise this option, HUD uses the definition of eligible low income housing found in subpart B of the proposed rule, which includes projects within two years of being eligible to prepay. Four commenters challenge the use of this definition, contending that HUD's interpretation expands the number of projects which can choose to file a plan of action under subpart C, by providing the option to projects which previously would have been ineligible under subpart C, i.e., those projects more than one year away from being eligible to prepay.

The Department disagrees with the commenters' position and has not amended the proposed rule to incorporate those comments. LIHPHA

clearly is intended to supersede ELIHPA and ELIHPA was effectively repealed upon the enactment of LIHPHA. Therefore, the definition of eligible low income housing which must be employed in connection with section 604(a) of LIHPHA is the definition set forth in section 229 of LIHPHA. This position is supported by the statutory language in section 604(c) which states that the repealed provisions of ELIHPA are applicable to those projects which, under section 604(a), have opted to be subject to ELIHPA. This language implies that the election occurs first, and the ELIHPA provisions are then applied to those projects electing ELIHPA. Hence, the subpart B provisions, including the definition of eligible low income housing, are applied until an owner chooses to be subject to subpart C. This conclusion is also supported by the fact that, under section 604(a), an owner may file a notice of intent "under" LIHPHA and thereby preserve its right to be subject to ELIHPA. The Department recognizes that using the more liberal subpart B definition of eligible low income housing in administering this section of the rule has the potential to increase the population of projects proceeding under subpart C; however, there is no indication that Congress intended that HUD use the repealed definition and not the new one in administering this section of the rule.

Another concern raised by two commenters was that sixty days from the effective date of this rule is not sufficient time for an owner to make its election to proceed under subpart B or subpart C. In response to these concerns, the Department recognizes and agrees that this time frame may not be adequate to allow an owner to make an informed decision and has amended paragraph (c) of this section of the proposed rule by permitting an owner to change its election within thirty days after receiving the valuation information from the Secretary under § 248.131. This will provide the owner with more information to make an informed choice, based on appraisals to be conducted on the project pursuant to § 248.111. It should be noted that the proposed rule has also been amended to require owners who choose to proceed under subpart C to reimburse the Department for the cost of HUD's appraisal, and the third appraisal, if one is conducted. This reimbursement is required since the Department does not have the authority or appropriations to expend funds for appraisals under ELIHPA.

A suggestion was made by another commenter that paragraph (c) be amended to permit owners to convert to

subpart B if a plan of action submitted under subpart C is approved before the effective date of this rule. The Department believes, however, that Congress did not authorize HUD to extend the right of conversion as the commenter suggests. Section 604(b) of LIHPHA explicitly grants the right of conversion to owners who have submitted a plan of action on or before October 11, 1990, and states that owners filing plans after such date shall not have any right of conversion under that subsection. Therefore, HUD concludes that Congress, by its express language, intended to give the right of conversion only to those owners specified in section 604(b) and that its failure to include any other class of owners was intentional. In accordance with this position, paragraph (c) of the proposed rule has not been amended to expand the right of conversion.

Paragraph (b) of this section permits an owner who has filed a plan of action under subpart C on or before October 11, 1990 to convert to subpart B by filing a notice of intent prior to February 5, 1992 or within thirty days of approval of the plan of action, whichever is later. Two commenters stated that the February 5, 1992 and thirty-day deadlines should be extended. One commenter was concerned that owners may have to make the decision to convert without adequate information, the other felt that this would not give nonprofit organizations sufficient opportunity to explore the possibility of purchasing the project. Given the fact that this rule was not made effective by February 5, 1992, the Department has decided to amend this paragraph to extend the time period for conversion to thirty days after the effective date of the rule.

The conversion deadline will have no impact on any nonprofit organizations or other potential purchasers of the project. At the time that an owner exercises its right to convert, it shall notify the Department of its intention by filing a notice of intent pursuant to § 248.105 and proceeding under subpart B in exactly the same manner as any other owner of eligible low income housing. Prospective purchasers will learn of the availability of the project for sale at the same time and by the same method as all other potential purchasers who are interested in buying housing subject to the provisions of subpart B.

Paragraph (d) of this section prohibits an owner who filed a subpart C plan of action after October 11, 1990 from changing its mind and filing a plan under subpart B. On fairness grounds, one commenter objected to this

prohibition and argued that if a plan of action is rejected by HUD under subpart C, the owner should be permitted to file a notice of intent under subpart B. The Department has rejected this recommendation. Under both subparts B and C, if a plan of action submitted by an owner is unacceptable to the Department, the owner has the opportunity to revise it. If, after revision, it is still rejected by the Department either because the Department has not made the required findings under § 248.221 or because the project is not eligible for incentives under § 248.231, then the plan of action would also be unapprovable under the relevant provisions of subpart B since the same standards would be applied by the Department under both subparts.

Section 248.7 (Waivers).

Three commenters stated that, when the Department permits a waiver of any provision of this part, the tenants, State and local government, and the public should receive notice of the waiver. One of these commenters also suggested the opportunity for a thirty-day comment period for tenants and the State and local government. The Department recognizes that a waiver under this program could have an impact on the tenants of the eligible low income housing and on the State and local government. In order to accommodate their interests, HUD has amended §§ 248.135(d) and (e) to require owners to submit with their plans of action a list of all waivers which they have requested. This information will be available to the tenants and State and local government as part of the plan of action package submitted to them under § 248.135(h) of subpart B and §§ 248.213 and 248.218 of subpart C and they will have the same opportunity to comment on the request for waivers as they do on the plan of action itself. Also, pursuant to the requirements of section 106 of the Housing and Urban Development Reform Act of 1989, any waivers granted by HUD will be published in the Federal Register on a quarterly basis.

Section 248.183 (Preemption of State and Local Laws)

In accordance with one commenter's suggestion, this section of the rule has been renumbered as § 248.183 and made part of subpart B in order to demonstrate its applicability to State and local laws which conflict with subpart B, and not those that conflict with subpart C. Twelve commenters, consisting of State and local governments, national foundations, nonprofit organizations, and attorneys requested further clarification and

guidance as to what types of State and local laws would be preempted by this section of the proposed rule.

In examining the legislative history concerning this provision, the Department has noted an inconsistency between the language of section 232(a) of LIHPHA and the House Conference Report to the Cranston-Gonzalez National Affordable Housing Act, Conf. Rep. No. 101-943, 101st Cong., 2d Sess. (the "Conference Report"). The statute grants the Department authority to preempt State and local laws which restrict or inhibit the prepayment of eligible low income housing, restrict or inhibit an owner of such housing from receiving the authorized annual return, are inconsistent with LIHPHA or are limited in their applicability to eligible low income housing for which the mortgage has been prepaid or the insurance contract terminated. The Conference Report, however, at page 460, indicates an intention to preempt only those State and local laws which target "prepayment projects for special treatment." A circumstance may arise where a law of general applicability is inconsistent with LIHPHA. If the Conference Report language is adopted in the rule, then that law could not be preempted. However, if the statutory language is followed, LIHPHA would supersede the inconsistent State or local law. Since the statutory language is clear on its face, the Department has no basis to resort to the contrary discussion contained in the Conference Report.

The language of subparagraph (a)(3) authorizes the Department to preempt State and local laws which are "inconsistent with any provision of this subtitle, including any law, regulation, or other restriction that limits or impairs the ability of any owner of eligible low income housing to receive incentives, * * *." Even though subparagraph (a)(3) explicitly permits preemption of only those laws which interfere with the receipt of incentives, HUD has construed the reference to this category of laws to be illustrative, and not complete. Congress' use of the word "includes" in subparagraph (a)(3) implies that laws interfering with incentives are only one type of legislation which comes within the bounds of that subparagraph. The Department, therefore, interprets subparagraph (a)(3) as authorizing it to preempt any State or local law which is inconsistent with subpart B and LIHPHA.

In order to clarify how preemption will work in practice, one commenter suggested that a statement be included in the regulation to the effect that State

and local laws of general applicability which are more onerous to eligible low income housing are discriminatory, and hence are preempted under this section. The Department agrees that if a statute establishes different standards, requirements or restrictions with respect to eligible low income housing than it does for other categories of housing, section 232(a)(4) of LIHPHA would preempt the statute as to the disparity in treatment. Another commenter suggested that State and local governments be given clear guidance that laws which assist the implementation of this subpart are not subject to preemption under this section. The statute does not distinguish between State and local laws that assist in implementing LIHPHA and those which impede the statute. However, as a general matter, any State or local law which does not materially affect the timetable for approval of a plan of action under subpart B and which does not impose substantive restrictions on prepayment would not be deemed by HUD to be "inconsistent" with LIHPHA.

A commenter questioned whether, given HUD's interpretation of the statute, State and local governments can enact legislation to fill gaps in LIHPHA and this subpart. State and local governments may enact legislation concerning the preservation of low income housing as long as the legislation does not violate any of the four conditions set forth in section 232(a). For example, one commenter suggested that the proposed rule be amended to allow a State or local law which limits owners, rate of return and applies generally to both federally-assisted and unsubsidized projects. HUD would preempt such a law, finding it to be in violation of subparagraph (a)(2) of this section. While the law is of general applicability, it restricts and inhibits owners from receiving the annual rate of return to which they are entitled under § 248.121 of this subpart. However, it should be noted that the law would be taken into consideration in appraising the project under § 248.111.

Certain commenters expressed concern that, in implementing this provision HUD may not recognize the historical deference given to State and local governments in the regulation of real property, land use and landlord-tenant relations. For instance, many communities have laws restricting conversion of rental housing to cooperatives and condominiums. These laws will be preempted only if they fall into one of the four categories listed in paragraph (a) of this section.

Additionally, HUD acknowledges that this provision applies only to State and local laws affecting eligible low income housing, as that term is defined in § 248.101, and not to FmHA projects, projects with expiring HAP contracts, or section 8 nonrenewals.

Section 232(b) of the statute lists those State and local laws which are not preempted by the Department to the extent that such laws are of general applicability and are not inconsistent with this subpart. The list consists of laws concerning building standards, zoning limitations, health, safety and habitability standards, rent control and condominium and cooperative conversion. One commenter stated that the regulation should indicate that this list is merely illustrative, and not exhaustive. The Department disagrees with this interpretation and takes the position that this list is inclusive. The statutory language, which was tracked in the proposed regulation, does not indicate in any way that it is meant only to be exemplary. In the absence of any direction to the contrary, the Department presumes that Congress only meant to exclude the preemption of those types of legislation specifically enumerated in section 232(b). Furthermore, this position is supported by the fact that the types of laws listed in paragraph (b) of the statute are those concerning the health and safety powers, which are generally retained by the States without Federal government interference.

The Department has chosen not to amend the proposed regulatory language to address specific legislation commenters have brought to the Department's attention. In the course of implementing this subpart, HUD will determine on a case-by-case basis, based on the language of this section, whether specific State or local laws should be preempted. The Department believes that it is impractical to make any preemption determination at this time, prior to the existence of a conflict. This section was amended, however, at one commenter's suggestion, to include the phrase, "under this subtitle including authorization" in paragraph (a)(3), in order to conform to the statutory language.

In response to a recommendation from another commenter, paragraph (c), which states that contracts entered into by an owner prior to November 28, 1990 and which restrict the owner's right to prepay the mortgage or terminate the mortgage insurance contract are not preempted, has been amended to include any contracts which are voluntarily entered into by the owner,

on or after the enactment of LIHPHA. The Department has decided to make this revision because owners of eligible low income housing have constructive notice of LIHPHA and its impact on prepayment and termination of insurance contracts. If an owner wants to restrict its rights under LIHPHA by entering into a contract, it is free to do so.

Subpart B—Prepayments and Plans of Action Under the 1990 Act

Section 248.101 (Definitions)

Aggregate Preservation Rent

A recommendation was made by three commenters that the definition of "aggregate preservation rent" be amended to include asset management fees, standard debt service coverage, vacancy underwriting allowances, and debt service for third party acquisition or rehabilitation financing. The definitions of extension and transfer preservation rents in the proposed rule already include debt service on any rehabilitation financing, which includes loans made by third parties. Debt service on any acquisition loans is included in the proposed definition of transfer preservation rent, and again, includes third party financing. Sections 214(b) (1) and (2) of the statute, which define extension and transfer preservation rents, do not include asset management fees as one of the costs to be supported by the preservation rents, and the Department has concluded that asset management fees are not an appropriate component of preservation rents.

Two commenters suggested that the debt service on federally-assisted mortgages be included in the calculation of extension preservation rent. The proposed rule already includes debt service on the federally-assisted mortgage as a component of both extension and transfer preservation rents.

The Department has decided to include vacancy underwriting allowances in the calculation of preservation rents. The need for a vacancy allowance is implied by the building block preservation rent approach, the statute's use of the term "gross potential income," in section 214 and the comparison of preservation rents to the income the property would produce if each unit charged 120% of the FMR, i.e., assuming full occupancy. In short, the aggregate preservation rent could not support the costs that the statute requires it to support unless some allowance is made for vacancy loss. Consistent with underwriting

practices for assisted properties, the Department will assume a three percent vacancy cost. For similar reasons, the Department will include standard debt service coverage allowances in the calculation of aggregate preservation rents. Consistent with its underwriting practices, the Department will assume a 1.11 debt service coverage ratio in figuring the preservation rents needed to support debt service on the existing mortgage, the rehabilitation loan, and the acquisition loan in the case of a transfer. Debt service coverage will only add to extension preservation rents if the required 8 percent return on preservation equity is inadequate to provide the required income cushion.

Bona fide Offer

The Department received 19 comments regarding its proposed definition of bona fide offer. The commenters requested further clarification of this definition. The Department has retained its original definition, but included a cross-reference to § 248.157(g), which sets forth the contents of a bona fide offer. The Department will consider an offer bona fide if the purchaser submitting the offer submits it within the applicable marketing period, under § 248.157(c), for that particular purchaser and if the offer contains a contract of sale acceptable to the Department and the appropriate earnest money deposit. Also, for an offer submitted under § 248.161 to be bona fide, the contract of sale must include a purchase price equal to the transfer preservation value of the project. The Department will include in its administrative guidelines language which will be required in the contract of sale.

Community-Based Nonprofit Organization

The Department has amended its proposed definition of community-based nonprofit organization in response to changes made in the regulatory definition of "community-based nonprofit organization" under the HOME program, title II of the Cranston-Gonzalez National Affordable Housing Act. However, the definition of community-based nonprofit organization does not require that the organization have a demonstrated capacity to carry out housing activities or a history of local community service, as is required in the HOME definition, and as one commenter requested. The reason for this difference is that HUD expects many community-based nonprofit organizations to be established as a result of the preservation program, and such newly-created organizations will

not have any demonstrated capacity, as organizations, in these areas.

Default

The way the term "default" is defined in this section differs from the definition applicable to multifamily mortgage insurance claims. For claims purposes, a mortgage is considered in default as soon as a mortgagor fails to make a payment under the mortgage. However, for purposes of filing a notice of intent, a 30-day grace period is provided for making any payments under the mortgage. A default does not occur, for purposes of this subpart, unless an owner fails to make a payment within 30 days after it becomes due. The rationale for this distinction, as noted in the preamble to the proposed rule, is to recognize that an owner's failure to make a mortgage payment on the first day of the month does not necessarily mean that a project is in financial jeopardy.

Six commenters suggested that the definition of the term "default" be amended to include covenant, as well as monetary, defaults. When a covenant default occurs, a mortgagee may accelerate the mortgage debt. The mortgagor's failure to pay the accelerated debt would convert the covenant default into a monetary default. (The Department would view an attempt by the owner to pay the accelerated debt as tantamount to a prepayment, which would thus be barred by LIHPHA.) Thus, there is no reason to amend the definition since a covenant default may lead to a monetary default, which falls within the proposed definition of "default." Under this subpart, a default is relevant in determining an owner's eligibility to file a notice of intent and in approving a plan of action. In either of these instances, it is irrelevant whether the default was precipitated by a covenant default or a failure to make a monthly payment under the mortgage.

One commenter stated that an owner should not be barred from filing a notice of intent if a default was caused by HUD's abuse of discretion, such as by improperly denying a rent increase, thereby making the owner unable to make its mortgage payments. Under the terms of the mortgage contract, a mortgagor is required, to make its payments in a timely manner (unless the actions of the mortgagee have excused performance, for example, by waiving timely payment). This contractual obligation exists without regard to the actions of the Department. Therefore, the Department has not amended this definition as the commenter has suggested.

Eligible Low Income Housing

The Department received thirty comments concerning its definition of "eligible low income housing." The proposed rule excludes from this definition those projects which are subject to a use restriction imposed by the Department to maintain the low and moderate income use of the project for the remaining term of the mortgage. This exclusion primarily affects those projects which have received flexible subsidy assistance, as authorized by section 201 of the Housing and Community Development Amendments of 1978, as amended, and 24 CFR part 219. Fourteen owners, developers, national nonprofit organizations, management entities, lenders, and an accounting firm, contested the Department's exclusion of projects receiving flexible subsidy assistance. Eight tenant organizations, legal aid services, nonprofit organizations, and State and local governments agreed with the Department's interpretation.

The Department notes that section 201 of the Housing and Community Development Amendments of 1978, as amended by section 211(c) of the Housing and Community Development Amendments of 1979, provides that HUD may provide flexible subsidy assistance only if the owner agrees to maintain the low and moderate income character of the project for the remaining term of the mortgage; HUD has implemented this requirement by obtaining the owner's agreement to prohibit prepayment of the mortgage or by execution of a use agreement. Only those projects which first received flexible subsidy assistance after the enactment of section 211(c) on December 21, 1979 are excluded from the definition of eligible low income housing. Projects which received flexible subsidy prior to that date are eligible low income housing and may proceed under this subpart.

The preamble to the proposed rule provides that the Department's rationale for excluding from ELIHPA flexible subsidy projects subject to use restrictions is principally because projects subject to a use agreement have no "higher and better use," as required by § 248.233, for the purpose of receiving incentives under that subpart. The same rationale supports excluding from this subpart those flexible subsidy projects subject to use restrictions.

Three commenters disputed this explanation, claiming that, while a use restriction could significantly decrease a project's appraised value, it may not preclude a higher or better use for the project. These commenters suggested

that this determination is one which should be made by an appraiser and not by HUD before the project is appraised.

The Department does not agree with this point of view, believing instead that Congress never intended to include projects with use restrictions in the eligible low income housing inventory. The purpose of LIHPHA, as noted at page 457 of the Conference Report, is to preserve low income housing which could be lost if an owner exercises its right to prepay the mortgage or terminate the mortgage insurance contract, resulting in the termination of the Federal use restrictions. Since those projects receiving flexible subsidy assistance are subject to use restrictions for the remaining term of their mortgages, it is irrelevant whether the mortgage is prepaid or the insurance contract is terminated. Hence, providing Federal incentives to these projects would not further the purpose of the statute. Congress has also tacitly acknowledged that projects receiving flexible subsidy assistance are excluded from this definition, for purposes of LIHPHA, by adopting HUD's numerical estimate of eligible low income housing, which has never included projects receiving flexible subsidy assistance.

Although, as pointed out by two commenters, the inclusion of projects with flexible subsidy assistance would increase the period of time during which use restrictions will be maintained on the projects, from the end of the term of the original mortgage until the end of the projects' remaining useful life, the Department's position is that this consideration does not have any bearing on the issue of eligibility under the statute. The preservation of these projects as low and moderate income housing will be addressed at the expiration of the mortgage term.

Eleven commenters, mostly State and local governments and nonprofit organizations, stated that if the Department takes the position that projects receiving flexible subsidy assistance are not eligible low income housing, and hence the owners of such projects may prepay their mortgages or terminate the mortgage insurance contracts without complying with the provisions of this subpart, the use restrictions on the projects must still remain in place until the date the mortgage would have been paid, in the absence of prepayment. The Department reiterates here the language contained in the preamble to the proposed rule. Projects encumbered with use restrictions under the flexible subsidy program are not deemed eligible low income housing and are therefore not

precluded by this subpart from prepaying their mortgages. However, even if the mortgage on such a project were prepaid, the owner would still be required to comply with the use restrictions for the duration of the term of the mortgage. Additionally, if the project was sold to another owner during the term of the mortgage, the purchaser would take the property subject to the use restrictions on the project.

Two commenters stated that where HUD has failed, in connection with the provision of flexible subsidy assistance, to require the execution of a use agreement to maintain the affordability restrictions for the remaining term of the project's mortgage, those projects should not be excluded from the definition of eligible low income housing. As previously noted, the requirement of use restrictions in conjunction with flexible subsidy was incorporated into the statute on December 21, 1979, so that projects which received flexible subsidy before that date were not required to have an executed use agreement to maintain affordability restrictions on the project for the term of the mortgage, and hence would be considered eligible low income housing. Projects receiving flexible subsidy after that date are required to have a use agreement in effect or otherwise ensure that the low and moderate income requirement be fulfilled (such as by agreeing to prepay the mortgage debt only with HUD's consent for the full term of the mortgage). While the Department is unaware of any cases, since December 21, 1979, where a use agreement or prepayment prohibition has not been executed as a condition of receiving flexible subsidy assistance, if such a case surfaces, the failure to execute a use agreement or to agree to a prepayment prohibition will not qualify the project as eligible low income housing. The requirement that an owner may receive flexible subsidy assistance only upon its agreement to maintain the affordability restrictions on the project for the mortgage's remaining term is statutory. The Department cannot waive this requirement, and if this statutory requirement has not been implemented due to an administrative error, the Department's position is that the owner nevertheless accepted the flexible subsidy assistance with constructive knowledge of the condition that the use restrictions be maintained on the project, and therefore, that the owner is bound by these restrictions.

One commenter asked for clarification as to what restrictions and obligations are imposed for projects receiving

flexible subsidy assistance. This issue is one which need not be addressed in this rulemaking. The commenter may refer to 24 CFR part 219 or the use agreement on a specific project to obtain this information.

Another commenter questioned whether projects which originally received rent supplement assistance which was later converted to section 8 assistance would be excluded from the definition of eligible low income housing. Sections 221.524 and 236.30 of HUD's regulations prohibit the prepayment of mortgages on projects receiving rent supplement assistance without the Department's consent. Section 229(1)(B) of LIHPHA provides that only projects which are eligible to prepay without the Department's prior approval are deemed eligible low income housing. Thus, projects receiving rent supplement assistance are clearly not eligible to proceed under this subpart. However, a project whose rent supplement assistance was converted to section 8 assistance is no longer subject to the regulations concerning rent supplement assistance. These projects would be governed by the section 8 regulations once the conversion took place. Since projects receiving section 8 assistance are not subject to a prepayment prohibition based on the receipt of such assistance, these projects can qualify as eligible low income housing.

Fair Market Rent

One commenter recommended that this definition state that the fair market rent is adjusted for utilities. As noted in this section of the proposed rule, the fair market rent is the section 8 published existing fair market rent which is adjusted for utilities, where appropriate. The utility adjustment is equal to the personal benefit expense for each unit in a project, as of the most recent HUD-approved rent increase. While no amendment is needed on this point, the definition has been amended to clarify that the fair market rent is not adjusted for utilities for the purpose of determining whether preservation rents exceed the Federal cost limit under § 248.123.

Low Vacancy Area

In response to one comment, the Department has amended the definition of "low vacancy area" to ensure that in measuring the number of vacant units only units in standard condition, which are "decent, safe and sanitary," will be included in the survey. The Department has decided not to accept two comments suggesting that HUD determine that the

vacant units are actually available to tenants who are likely to be displaced. The proposed definition already requires the units to be "vacant available rental units." It would be too cumbersome to require the Department to ascertain for each market area that the units will be vacant at some future time for tenants who will potentially be displaced due to prepayment. Additionally, HUD has rejected the comment recommending that a specific vacancy rate, such as 2-3%, be adopted to determine whether a particular market area qualifies as a low vacancy area. Because market conditions will vary in different areas, this type of threshold has a high potential for inaccuracy. For example, in an expanding market area, 7% vacancy may be considered low, while in a stagnant market, 6% vacancy may be very high. The Department believes that a more reliable estimate could be made by examining the market conditions in each area, rather than by adopting a vacancy rate which would be applicable across the nation.

Nonprofit Organization

A suggestion was made by thirteen commenters that limited partnerships be included in the definition of "nonprofit organization" on the condition that no profits inure to the benefit of the partnership or any member, founder, contributor, partner or individual associated with the partnership. The commenters suggesting this amendment consisted of State agencies, national and regional nonprofits, and a legal services organization. The rationale for including limited partnerships would be to permit these entities to utilize tax credits when purchasing eligible low income housing. The Department's position is that a limited partnership does not satisfy the definition of a nonprofit organization. Any limited partner, regardless of the legal composition of the managing general partners, is still by definition profit-motivated and, therefore, cannot be considered a priority purchaser for purposes of this subpart. It is irrelevant whether the general partner of the partnership is a nonprofit entity or whether there is only one limited dividend or for-profit partner in the partnership. This interpretation does not exclude limited partnerships from eligibility to purchase projects under this subpart. However, they will not have the priority status granted to nonprofit organizations.

Preservation Equity

Several commenters questioned the elements included in the definition of extension preservation equity. One

suggested that the amount of funds in the residual receipts account as of the effective date of the plan of action should be included as part of the owner's equity. Residual receipts belong to the owner of a project, but are not considered part of the project itself for purposes of determining equity. This conclusion is supported by the fact that residual receipts are not normally included in the calculation of the project's value under standard appraisal practices. Extension preservation equity is the value on which an owner's annual rate of return is based, and the Department believes that an owner is not entitled to a return under LIHPRA on the funds deposited in this account.

Another commenter contested the fact that outstanding balances on non-federally-assisted mortgages are deducted from extension preservation equity, resulting in a possible reduction in the annual return to an owner who retains the project and receives incentives. Section 229(8)(A) of the statute requires that all debt secured by the property be deducted from extension preservation equity. The Department recognizes that this differs from the statute's definition of transfer preservation equity, which only requires the outstanding balance of the federally-assisted mortgage to be subtracted. However, since the statute unambiguously makes this distinction between extension and transfer preservation equity, the Department believes that it is left with no authority to alter it and, hence, has not amended either definition.

Preservation Value

The Department does not agree with the comment that extension and transfer preservation value should both be based on the highest and best use of the eligible low income housing. The statutory language, at section 213(b), expressly provides that the extension preservation value is to be based on the highest and best use of the project as residential rental housing, while the transfer preservation value is based on its highest and best use. HUD has no justification for ignoring this statutory distinction.

Priority Purchaser

According to one commenter, the definition of priority purchaser should be modified to give priority to the purchaser who is most qualified to preserve the property, even if this purchaser is a for-profit entity. The definition of "priority purchaser" in the proposed rule tracks the statutory language, which gives priority to resident councils organized to acquire a

project under a HUD-approved homeownership program, and nonprofit organizations and State and local government agencies agreeing to maintain the low income affordability restrictions for the remaining useful life of the project. For-profit entities are not included in the statutory definition of priority purchasers, but are explicitly classified as qualified purchasers in section 231 of the statute. In the Conference Report, at page 464, Congress explained that the reason for this distinction between priority and qualified purchasers is to "establish a genuine advantage for priority purchasers." Therefore, a for-profit organization will not be deemed a priority purchaser.

Additionally, HUD will not give preference to the priority purchaser which is most qualified. Attempting to ascertain which of the priority purchasers is most qualified would entail subjective judgments. The Department will not compare each potential purchaser's qualifications, but rather, will determine whether the potential purchaser has met the minimum standards of a priority purchaser and has submitted an offer which is bona fide. A priority purchaser will be chosen by the owner in accordance with the procedures set forth in § 248.157 of this subpart. If an owner receives more than one bona fide offer from priority purchasers, the owner may accept the highest bid which does not exceed the transfer preservation value. In a mandatory sale, the owner must accept the first bona fide offer at a sale price that is not less than the transfer preservation value.

Related Party

One hundred comments were received by the Department concerning its implementation of the related party rule. The overwhelming response was that the Department's interpretation of "related party" is too broad. The major issues addressed by the comments concerned seller financing, owners, membership on the board of directors of nonprofit purchasers, and nonprofits buying out the interest of their for-profit partners.

Fifty-seven commenters spoke out in favor of seller financing, with none opposed. The main argument they advanced was that the limitation on acquisition loans in § 241.1067(b), stating that the maximum amount of the loan may not exceed 95% of the project's transfer preservation equity, plus, in the case of priority purchasers, any expenses associated with the acquisition, loan closing, and

implementation of the plan of action, would make it difficult for priority purchasers to raise the remaining 5% if sellers were not allowed to lend them the money to complete the transaction. The Department acknowledges that this is an important concern and one which may impede sales to priority purchasers. Therefore, the Department has decided to amend this definition to permit seller financing as long as (1) only take-back financing, and not a grant, is provided by the seller; (2) the maximum amount of the financing is limited to 5% of the project's transfer preservation equity; (3) the financing is not a condition of accepting a bona fide offer or entering into a sales contract; and (4) the financing is provided through an arms-length transaction where the seller has no input in the continued operation of the project. Under this interpretation, a management company that is affiliated with the seller may also provide financing to a purchaser; however, the terms of the loan must meet the four conditions required for seller financing, and in addition, the financing must not be conditioned on the retention of the management company to manage the project.

The Department notes that even though the acquisition loan is limited to 95% of transfer preservation equity, plus, for priority purchasers, any expenses associated with the acquisition, loan closing, and implementation of the plan of action, the Department may provide a grant to a priority purchaser, pursuant to § 248.157(o), to cover the remaining 5% of the sales price. If the Department provides a grant equal to, or more than, 5% of transfer preservation equity, then no seller financing will be needed and, therefore, will not be permitted.

According to thirteen commenters (eight national or regional nonprofit foundations or organizations, three State or local government agencies, one tenant, and one attorney), owners or former owners should be permitted membership on the boards of nonprofit purchasers. In addition, members of Congress cited the Conference Report as evidence of their intent that owners be permitted to sit on nonprofit boards. The Conference Report, at page 469, states that if "an individual is involved in the ownership of an assisted project and also participates, on the board of directors of a nonprofit organization that seeks to acquire a project from the owner, this participation alone should not trigger the application of the related party rule." This view was also expressed by members of Congress in the Congressional Record, on October 26, 1990, at page S.17137. In the face of

this expression of legislative intent, despite the fact that this intent is not demonstrated in the statute itself, and because of the strong public support evidenced in the comments, the Department has amended the definition of related party to permit owners, and former owners, to be members of the board of directors of nonprofit purchasers, as long as the owners and former owners are nonvoting members, sit in their personal capacity and do not receive any compensation for their board membership.

Eighteen comments were received by the Department suggesting that nonprofit organizations should be permitted to buy out the interest of their limited dividend and for-profit partners. These comments were made by seven nonprofit organizations, four of which are organized on the national level, five State and local government agencies, three tenants, an attorney, and members of Congress (See colloquy between Senators Kerry and Cranston at Congressional Record, October 26, 1990, p. S.17137). As long as the transaction is at arm's length, the Department has decided to permit nonprofit organizations to buy out their partners, interest in eligible low income housing pursuant to the provisions of this subpart. The definition of related party has been revised accordingly.

Remaining Useful Life

One commenter suggested that a remaining useful life of 50 years may be unrealistic for some projects. LIHPRIA requires that in order to receive incentives the owner or purchaser of eligible low income housing must agree to retain the low income affordability restrictions on the project for its remaining useful life. The determination of when the remaining useful life of a particular project terminates is left to the Department's discretion. However, the owner is entitled to petition the Department for a determination that the project's useful life has expired. Since, pursuant to section 222(c) of the statute, owners are not permitted to exercise their right to petition for 50 years from the date of approval of a plan of action, the Department has assumed that Congress expects the remaining useful life of eligible low income housing to be at least 50 years from the date of plan of action approval.

Another commenter questioned what happens to rent levels if a project's remaining useful life exceeds the mortgage period. The Department has concluded that once the mortgage on a project has been paid in full, whether through prepayment, or at the end of the original amortization period, rents will

be lowered commensurate with the decrease in debt service on the property. The decrease in rent will not affect an owner's rate of return, but may decrease the amount of Federal subsidy provided to the project, and at the same time protect the affordability of the units for low and moderate income families.

One commenter questioned what the Department's policy would be if a project covered under a plan of action is destroyed or demolished during the project's remaining useful life and the insurance proceeds are insufficient to rebuild the project. There are three options which could be considered. The owner could be required to rehabilitate the project to its original condition through the use of the insurance proceeds and subsidies provided by HUD and other sources; the owner could be required to pay-off the remaining balance of the mortgage with the insurance proceeds without rebuilding the project; or if there is no mortgage on the project at the time of the destruction, the owner could be permitted to retain the insurance proceeds without rebuilding the project. Many factors could influence this decision, such as the number of years that would have been left of a project's remaining useful life if the destruction had not occurred, the extent of the destruction, the cost of rebuilding the project, the need for low income housing in that particular locality at the time of the destruction, etc. At this time, the Department declines to make a fixed policy concerning the impact of destruction or demolition on a project whose useful life has not ended, and intends to examine this issue on a case-by-case basis as the need arises.

Resident Council

A commenter recommended that the definition of "resident council" should be amended to state that it is an organization open to all residents and only to residents. In response to this recommendation, the Department has amended the definition accordingly. The Department has declined, however, to require that a resident council represent a minimum proportion of the tenants, as suggested by the same commenter. The Department feels that there is no need to require a certain level of representation for the formation of a resident council. If tenants wish to organize a resident council, they may do so even if only a minority of the tenants participate. If the resident council intends to purchase the project under a resident homeownership program, then a minimum indication of support is required under § 248.173(c), in connection with submitting a bona fide

offer. Additionally, if the resident council submits a bona fide offer under § 248.157 or § 248.161, then it must provide an earnest money deposit, which will also demonstrate tenant support of the council's actions.

Special Needs Tenants

In order to provide additional protection to tenants who may be unable to find vacant affordable housing in the event of prepayment, the Department has expanded the definition of "special needs tenants" in response to the suggestion made by two commenters. The interim rule provides that, in addition to those who are elderly (at least 62 years of age) and/or disabled, special needs tenants include families of five or more persons which require units containing three or more bedrooms. The Department has added large families to this definition due to the shortage of large multifamily rental units in many market areas, making it difficult for these families to find suitable replacement housing. However, contrary to one commenter's suggestion, the Department has declined to expand this definition to include minority households and single parent families. Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, as well as 24 CFR parts 1, 100, 107, 110 and subparts I and M of part 200, should provide sufficient protection to minority families and single parent families seeking replacement housing. Additionally, inclusion of these household types in the definition of special needs tenants would make this classification almost meaningless, given the large number of these household types which reside in eligible low income housing.

Tenant Representative

Twelve comments were received concerning the definition of "tenant representative." Several commenters sought clarification as to the difference between a resident council and a tenant representative. For purposes of this subpart, a tenant representative is an individual or organization who represents some or all of the tenants, for purposes of receiving information under § 248.181. A tenant representative could be a tenant, a housing advocate, legal aid, or a nonprofit organization. A "tenant representative" is not necessarily designated to represent tenants in negotiations between the owner and/or HUD or in purchasing the project. The tenant representative represents the tenants for purposes of receiving notifications and information under this subpart.

In comparison, a resident council is an organization composed solely of tenants, whose function is to serve as the governing body of a tenant association; it represents the tenants in negotiations on purchasing the project on behalf of the tenants.

The proposed rule requires that tenant representatives represent at least 50% of the occupied units of a project. The Department received seven comments claiming that this number is too high and one comment supporting this percentage. Those against the 50% limit were State and local government agencies, nonprofit organizations and an attorney, while the commenter in favor was a State agency. No response was received from any tenants. Upon reconsidering the issue, the Department has decided to omit the requirement that a tenant representative must represent a certain minimum percentage of the tenants. Since, as previously noted, a tenant representative's function under the regulation is purely informational, the Department feels that there is no need to require a minimum showing of support by the tenants. While this may mean that more than one tenant representative will exist for each project, this should not put a substantial burden on the Department or owners who are required to provide copies of documents to those tenant representatives. In order to identify these representatives, tenants are instructed, in the notice of intent, submitted pursuant to § 248.105, to provide the owner and HUD with the name(s), address(es), and telephone number(s) of their representative(s).

The Department notes that a tenant representative, whose function is to supply tenants with the information it receives pursuant to this subpart, must make available this information to all tenants who request it.

Section 248.103 (General Prepayment Limitation)

A comment was received suggesting that a list be compiled of all insured projects falling within the scope of paragraph (c) of this section, which restricts mortgagees from foreclosing the mortgage on, or acquiring by deed in lieu of foreclosure, eligible low income housing. The Department has compiled a list of eligible low income housing as a result of a survey of local field offices conducted earlier this year. Mortgagees may contact the field offices to request a copy of this list.

Another comment was received suggesting that a mortgagee letter should be issued by the Department, and that such a mortgagee letter should instruct the mortgagee on how to correctly

proceed under this subpart and should constitute a defense against any charge of improper action directed at a mortgagee. The Department issued Mortgagee Letter 91-25 on May 28, 1991 which indicates the mortgagee actions which would constitute a violation under this subpart. This letter will not constitute a defense to any wrongdoing on the part of the mortgagee. Furthermore, administrative action may be taken by the Department, pursuant to paragraph (e) of this section in the event of any violation.

Section 248.105 (Notice of Intent)

Management organizations and national nonprofit foundations submitted seven comments regarding the prohibition of certain projects with mortgages which are, or have been, in default, from filing a notice of intent under this section. One commenter suggested that the Department accept notices of intent filed by owners whose mortgages are in default at the time of filing, as long as the default can be cured by the receipt of incentives. Section 212(c) of LIHPHA precludes owners from submitting a notice of intent if the mortgage fell into default after the enactment date of the statute or if the mortgage fell into default prior to the enactment date and the owner does not agree to recompense the appropriate Insurance Fund in the amount of any loss. For those mortgages which are insured and that have fallen into default on or after the enactment date, the Department has determined they are not in default for purposes of filing a notice of intent unless the mortgages have been assigned to the Commissioner as a result of the default. Hence, certain owners with insured mortgages may be able to file a notice of intent under this section while in default. However, pursuant to § 248.145(a)(11), the owner must cure the default as a condition of the Department's approval of a plan of action. Since the default must be cured prior to plan of action approval and incentives will not be provided until after the plan of action is approved, incentives may not be used to cure the default.

The proposed rule provided that an owner of a project whose mortgage was in default prior to November 28, 1990 and continued in default past that date would be ineligible to file a notice of intent if the mortgage has been assigned to the Commissioner as a result of the default or if the default occurred while the mortgage was held by the Commissioner. One commenter questioned HUD's statutory authority

for treating projects whose mortgages continued in default past the date of enactment in the same manner as projects whose mortgages first fell into default after the date of enactment. HUD believes that statutory authority for its position lies in section 212(c)(2) of the statute, which provides in part that an owner shall not be eligible to file a notice of intent if the mortgage covering the housing—

(A) fell into default before, but is current as of, [November 28, 1990]; and (B) the owner does not agree to recompense the appropriate Insurance Fund, in the amount the Secretary determines appropriate * * *.

HUD construes this provision as establishing that owners of projects whose mortgages fell into default prior to November 28, 1990 are ineligible to file a notice of intent, except in cases where the owner brings the loan current by November 30, 1990 and agrees to recompense the Secretary for losses to the Insurance Fund. Under an alternative reading of the statute, the quoted language would be applicable only to loans which fell into default prior to November 30, 1990 but were current as of such date. If this interpretation were correct, there would be no provision in section 212(c) addressing projects whose mortgages coo that the workout agreement itself is not current, the impact on HUD is the same as a default under the mortgage. Therefore, if an owner is ineligible to file a notice of intent under subparagraph (a)(3) of this section, because it has failed to keep the workout agreement current as of the enactment date, then the owner is also ineligible under section 212(c)(2) of the statute because the mortgage has not been current as of that date.

Under subparagraph (a)(4) of this section, an owner whose mortgage fell into default prior to the enactment date and which has been current as of that date may submit a notice of intent if the owner agrees to recompense the insurance fund for any losses. One commenter suggested that the owner reimburse the fund for lost interest due to the default. There should not be any lost interest due to a default. While a loan is in default, interest is still charged against the unpaid principal balance of the mortgage. The owner will be required to pay this accrued interest under the terms of a workout agreement. The commenter also suggested that the owner reimburse HUD for any costs involved in recasting the delinquent principal and interest, as well as requiring the owner to replenish reserves or escrows for which deposits were waived as a result of the default.

Any cost involved in recasting principal and interest is an administrative cost to the Department, not a cost to the insurance fund, and HUD does not have the statutory authority to require the owner to reimburse the Department for any costs which are not losses to the insurance fund. The waiver of any deposits to reserves and escrows because of a default likewise does not constitute a loss to the insurance fund. Again, the Department does not have the authority to require an owner to make these deposits as a condition to filing a notice of intent.

Another commenter suggested that the Department and the owner jointly determine the amount which needs to be reimbursed to the insurance fund. Section 212(c)(2)(B) of the statute states that to be eligible to file a notice of intent, the owner shall agree to recompense the insurance fund "in the amount the Secretary determines appropriate." Thus Congress gave HUD the discretion to determine this amount. The Department has, however, decided to permit the owner more latitude in the timing of the reimbursement. The preamble to the proposed rule requires that the reimbursement occur prior to filing a notice of intent. The Department has extended this to permit the owner to reimburse the insurance fund at any time prior to the date a plan of action is approved. If reimbursement does not occur prior to this time, the plan of action will not be approved. No changes to the proposed rule are needed in order to implement this procedure.

A commenter inquired whether an owner must file a notice of intent upon reaching the project's eligibility date under LIHPHA, or else lose its eligibility to proceed under this subpart. Pursuant to this section, a notice of intent may be submitted by the owner within 24 months of the 20th anniversary date of the final endorsement of the mortgage. The owner has no obligation to file at this time and may file at any time during the remaining term of the mortgage.

Paragraph (b) of this section of the proposed rule states that a notice of intent must include the name, number and location of the project, a brief latitude in the timing of the reimbursement. The preamble to the proposed rule requires that the reimbursement occur prior to filing a notice of intent. The Department has extended this to permit the owner to reimburse the insurance fund at any time prior to the date a plan of action is approved. If reimbursement does not occur prior to this time, the plan of action will not be approved. No changes

to the proposed rule are needed in order to implement this procedure.

A commenter inquired whether an owner must file a notice of intent upon reaching the project's eligibility date under LIHPHA, or else lose its eligibility to proceed under this subpart. Pursuant to this section, a notice of intent may be submitted by the owner within 24 months of the 20th anniversary date of the final endorsement of the mortgage. The owner has no obligation to file at this time and may file at any time during the remaining term of the mortgage.

Paragraph (b) of this section of the proposed rule states that a notice of intent must include the name, number and location of the project, a brief description of the owner's plans for the project, the reason the owner intends to prepay the mortgage, terminate the insurance contract, or extend the affordability restrictions, and a request to tenants that they notify the Department and the owner of the existence of any tenant representatives. The Department received four comments requesting that this language be modified. Two commenters requested that State or local governments also be notified by the tenants of the existence of any tenant representatives. The Department has amended this paragraph of the proposed regulation to request tenants to provide the State or local government official to whom the owner sent a copy of the notice of intent with the names of any tenant representatives.

One commenter suggested that the Department eliminate the requirement that an owner must state its intentions for the project under the preservation program. While the notice of intent is not meant to bind an owner to a particular course of action, the Department believes that a statement of an owner's intentions with regard to the preservation of the project is relevant to the prepayment process. It will provide HUD with some indication of the time and financial resources which will be required to process the plan of action. Tenants, State and local agencies and other interested parties will also be able to become aware of an owner's preliminary intentions if this information is included in the notice of intent. Therefore, the Department has retained this requirement.

One commenter recommended that an occupancy profile be included in the notice of intent. The proposed rule requires submission of the profile as part of the plan of action under § 248.135 and the Department sees no reason for requiring the submission of an occupancy profile at the time a notice of

intent is filed. An occupancy profile is required only if the owner extends the use restrictions on the project, either by retaining the project or transferring it to a qualified purchaser. At the time a notice of intent is submitted the owner may be uncertain as to whether it will extend the restrictions, and if a profile is required at that time, it may be prepared needlessly. Additionally, because an occupancy profile must reflect the project occupancy as of the date a plan of action is approved, the profile will tend to be more accurate if it is submitted closer to that date. If it is submitted with the notice of intent, it is more likely that another profile will need to be compiled later in the process.

Other commenters suggested that the notice of intent be written comprehensibly, in plain English, so it is understandable by relatively uneducated tenants and recommended that the Department consult with tenants or nonprofit organizations for assistance in preparing the notice. The Department acknowledges the importance of submitting notices to the tenants which are understandable and will not cause alarm. The Department has drafted the language for the notice, which will be included in the Department's administrative guidelines, and has taken this concern into account by listing all of the possible outcomes for the project, but also reassuring tenants that the Department wants to work with the owner in preserving the project. If tenants or nonprofit organizations are still concerned about this matter, they are welcome to provide the Department with their specific comments on how the notice can be clarified and made easier to understand.

Paragraph (c) of this section of the proposed rule requires that the notice of intent be simultaneously submitted to the State or local government, the mortgagee, the tenants, and any tenant representatives known to the owner. Fifty-six comments were received by the Department concerning this provision. The majority of these comments addressed the issue of translating the notice of intent for non-English-speaking tenants. The proposed rule states that the notice of intent shall be translated if a substantial number of the tenants in the project do not speak English. Commenters questioned the meaning of "a substantial number" and suggested amounts, such as five or ten percent of the total number of tenants. Others stated that translation should be required upon the request of any tenant or group of tenants. Also, commenters suggested that translations be posted in the affected buildings and that HUD

should do the translating rather than require owners to take on this responsibility. The Department has decided to resolve this issue by adopting the suggestion of one commenter. The Department will provide owners with a cover sheet to be attached to the notices of intent delivered to the tenants. The cover sheet shall instruct tenants, in the necessary languages, that if they require a translated copy of the notice of intent, they may contact the owner of the project who will request an appropriate translation from the local field office. The owner's address and telephone number will be indicated on this sheet. The owner will tabulate the number of translated copies needed and request them from the local field office, which will prepare the translations. The owner will be responsible for making the translated copies provided available to the tenants. This resolution will ensure that all tenants have the opportunity to receive an accurately translated copy of the notice of intent and will keep the burden of preparing the translation from falling on the owners.

A large number of the commenters on this section were concerned with the method of delivery of the notice of intent to the tenants. Three commenters suggested that the proposed rule's requirement that notices of intent be sent to each tenant and any tenant representative imposes an additional burden not required by the statute. Fourteen other commenters, however, suggested strengthening the proposed rule's standard by requiring that the notices of intent be sent by certified mail or by the local HUD field office to ensure their receipt by each tenant. Another commenter stated that sending the notices of intent to tenants will only confuse them, and they should not be sent at all.

Section 230 of LIHPHA requires that all notices to the tenants be posted in the affected buildings and sent to any tenant representatives. As noted in the preamble to the proposed rule, the Department interprets this as a minimal standard of notice. For purposes of notifying tenants of the submission of a notice of intent, an additional requirement was adopted in the proposed rule requiring submission of the notice to each tenant in order to identify tenant representatives who may not be known to the owner. The purpose of this requirement is to ensure that all tenants are made aware of the owner's submission and to request tenants to provide the names and addresses of all tenant representatives to HUD and the owner. At this stage in the preservation process, it is very likely that the

Department and the owner are unaware of the existence of any tenant representatives and without requesting this information from the tenants, HUD and the owner may unintentionally fail to fulfill the statutory requirement by not sending notices to these representatives. Requesting this information in the first notice will resolve this problem.

In response to the comments, the Department has decided to clarify the language in the proposed rule by requiring that the notice be sent to each "occupied unit," rather than each tenant. The Department does not wish to adopt a specific standard for delivery, however. The statute puts the responsibility of notifying the tenants on the owners, and the owner must certify that it has complied with the notice requirements when submitting the notice of intent. The manner in which the requirements are fulfilled, whether by sending the notice certified mail, regular mail, or hand delivery to each unit, or unit's mailbox, is left to the owner's discretion. The owner should be aware, however, that if it fails to comply with the notice requirements, the notice will be deemed invalid, and the owner will have to resubmit a new notice in order to proceed under this subpart. The Department believes that this is a sufficient enforcement mechanism, making it unnecessary for HUD to impose a stricter delivery standard.

Four commenters were concerned about delivery of the notice of intent to State and local governments. Section 212 of LIHPHA requires the owner to simultaneously submit the notice of intent to "the appropriate State or local government for the jurisdiction in which the housing is located * * *." Three comments were received suggesting that in the proposed rule, the term "State or local" should be replaced with "State and local." The statute provides the owner with the option of sending the notice to either the State or the local government. It does not require notification of both, and the Department has decided not to restrict this option. Another commenter suggested that the language of the proposed rule be amended to state that not only the chief executive officer, but also any officer designated by executive order or State or local law, should be sent a copy of the notice. This would ensure that the proper individual is made aware of the notice. The Department has added this requirement to the rule.

Other commenters suggested that the notice should also be sent to tenant advocacy groups, legal services organizations, holders of seller

financing, and limited partners of the owner. Tenant advocacy and legal services groups would be sent copies of the notice of intent only if they are designated tenant representatives, as that term is defined under § 248.101, otherwise an owner is not required to send them copies of the notice of intent. Additionally, with regard to limited partners, the Department presumes that an owner is acting within its authority by submitting a notice of intent and has notified any interested parties of its submission. The Department cannot enforce a requirement that partners be notified of the notice of intent since HUD may not have knowledge of the existence of these parties. This section of the proposed rule does require notification of mortgagees. Therefore, the proposed rule has not been amended in response to these comments.

Notices of intent will not be considered properly filed for purposes of this subpart unless the notification requirements specified in paragraph (c) of the rule are fulfilled. However, the failure of an owner to comply with any non-federal notification requirements will not invalidate a notice of intent. In the case of owners who filed notices of intent pursuant to section 604 of the statute and § 248.5 of subpart A, in order to preserve the option of proceeding under either this subpart or subpart C, the notification requirements in the transition notice issued by the Department on December 11, 1990, as Notice 90-88, "Transition Rule for Filing Notices of Intent Pursuant to Section 604(a) of the Cranston-Gonzalez National Affordable Housing Act of 1990," must have been complied with. If an owner failed to comply with the notice requirements set forth in the transition notice, the owner will have failed to preserve its option of proceeding under ELIHPA. An owner who properly filed a notice of intent under the transition provisions must comply with the notice requirements of this section or § 248.211 upon making its election to proceed under this subpart or subpart C in order to maintain the validity of the notice of intent.

If an owner files a notice of intent under this section and the Department determines that the owner is not eligible to proceed under this subpart, then HUD will notify those persons and entities listed in paragraph (c) of this section of the interim rule that the notice is invalid. The purpose of this requirement is to ensure that tenants and State or local governments do not needlessly expend time and resources in anticipation of purchasing the project or providing financial assistance to the project.

Section 248.111 (Appraisal and Preservation Value of Eligible Low Income Housing)

This section of the proposed rule establishes the appraisal process for valuing eligible low income housing under this subpart. Two commenters took issue with the need for the preservation process to include appraisals at all. However, since the performance of appraisals is mandated in section 213 of the statute, the Department has no authority to omit this requirement.

One commenter stated that the appraisal process is expensive for both the owner and HUD and is very time-consuming and imprecise. This commenter requested that section 8 fair market rents (the "FMRs") should be used instead of appraisals. The Department sees no reason to supplant the appraisal with FMRs. While FMRs are a good measure of rents in a metropolitan area, they are not generally an acceptable measure of value. The most accurate manner to determine a project's value is through independent and professional appraisals.

The second commenter asked that owners be permitted to sell their projects for what a willing buyer will pay a willing seller, and not be limited to the transfer preservation value. By statute, the appraisal process determines fair market value and appropriate compensation for an owner. Under a voluntary sale an owner may sell its project for no more than the transfer preservation value. The appraisal is central to the LIHPHA preservation strategy because it fairly establishes the preservation value upon which the Department will base incentives and compensation.

Two commenters said that tenants should be allowed to perform their own appraisal. The Department will not consider such tenant appraisals in determining preservation value since it does not have the authority to do so under LIHPHA. HUD is confident that the process of reconciling HUD's and the owner's appraisals, possibly with a third appraisal, will objectively establish preservation value. As is discussed in response to related comments, the separately published Appraisal Guidelines do provide tenants with opportunities for appropriate input into the appraisal process.

One commenter recommended that HUD permit qualified appraisers to determine the fair market value of the property without further guidance from the Department. The Department notes that the statute requires it to publish

appraisal guidelines to implement assumptions and procedures mandated by statute and the preservation program process.

The Department received 19 comments asking that these Appraisal Guidelines be published for notice and comment. These guidelines were published for notice and comment on December 12, 1991 at 56 FR 64932. One commenter said that the lack of defined appraisal standards made it appear less likely that owners will realize their equity. Appraisal standards have been defined in the published Appraisal Guidelines.

We received approximately two dozen additional comments that dealt with issues specific to the Appraisal Guidelines. These comments were forwarded to HUD staff preparing the Appraisal Guidelines. They have been taken into consideration and are not discussed here. Comments that apply both to this regulation and the Appraisal Guidelines are considered here.

One commenter suggested that among the qualifications for an appraiser should be that it not be affiliated with the original mortgage lender or the lender that will be used for the section 241(f) loan. The Department agrees that the appraiser should not be involved in a situation that may constitute a conflict of interest. At the time of the appraisals, however, no mortgagee for the rehabilitation, equity take-out, or acquisition loans will have been identified. Thus, the Department has amended § 248.111(c)(1) of the regulations to require that appraisers not be affiliated with the current mortgage holder.

A commenter said that it may be an undue burden to have the requirement that the appraiser be certified or licensed in states where certification is not required. The Department declines to change this requirement since under title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73, 12 U.S.C. 3310 *et seq.*, appraisals performed in connection with federally-related transactions must be conducted by individuals certified or licensed by the State in accordance with the Act's requirements. States are required to have licensing procedures and standards in place by December 31, 1992.

Two commenters said that the assessment of rehabilitation costs, or capital needs assessment, should be done by a competent estimator with experience in multi-unit construction. Similarly, five commenters said that HUD should require an independent

engineering survey and a capital needs assessment. Another suggested that the analysis of replacement reserves be done by professional architects or engineers. These arguments, among others, persuaded the Department to have its own Architectural and Engineering staff or contractor undertake the capital needs assessment and reserves analysis instead of leaving these to each appraiser. The joint inspection format, discussed in the separately published Appraisal Guidelines, ensures that all concerned and knowledgeable parties have input to the capital needs assessment. At the same time, having a single, experienced estimator ensures that appraisers have in common a realistic, professional rehabilitation cost estimate and that eventual rehabilitation costs do not differ radically from those used at this stage to determine preservation value. It should be noted that, after initial reserve funding requirements are set by a formula described in the Appraisal Guidelines, future annual contributions will be determined periodically by HUD upon request of the owner.

Three commenters said that the Department should consider in its guidelines those applicable regulations and covenants that affect value, and that these should be furnished by owners' lawyers and appraisers. One commenter asked that the analysis of laws and contracts that affect value be done by lawyers. The Department agrees that such analyses should be done by competent professionals, but believes that it is the appraisers' responsibility as part of the appraisal assignment to collect such input from the appropriate sources and, using the Appraisal Guidelines provided by the Department, determine the effect of any covenants or use restrictions on value.

Two comments suggested that the appraisal guidelines contain specific instructions for estimating "conversion costs" and conducting capital needs assessments. The Department has published specific instructions regarding conversion costs and capital needs in the Appraisal Guidelines. The Department will conduct a capital needs assessment as part of the appraisal that will determine the costs of bringing the property back to original physical standards. This assessment will be provided to the appraisers.

A commenter recommended that the determination of operating expenses, reserve requirements, and rehabilitation needs in conjunction with HUD's review and approval of a plan of action be separate from the determinations made at the appraisal stage. Operating

expense estimates and rehabilitation needs identified in the plan of action will receive a separate review and are expected to be more detailed than those conducted as part of the appraisal.

Three commenters suggested that HUD needs to distinguish between rehabilitation costs that an owner would incur to convert the project to a higher and better use for purposes of preservation value as opposed to rehabilitation costs necessary to preserve the project as low income housing for its remaining useful life. Another commenter questioned why, since the appraised value can be used to determine the amount of market rents, section 241 loans, etc., the proposed regulations say that the amenities and upgrades necessary to bring the project to its highest and best use will not be financed as part of the plan of action. Although fair market value is estimated as if the amenities and upgrades required to attract a market rate tenancy are added, they are not actually added since the project is not converted to market rate rental. These upgrades influence actual rents and equity or acquisition loan amounts only because the owner must be fairly compensated for preserving the housing for a low income tenancy. The rehabilitation necessary for the preservation of the affordable housing as decent, safe, and sanitary housing is independent of the upgrades necessary to attract a market-rate tenancy, and will be determined by the Department after a joint inspection conducted by HUD and the purchaser or owner during the preparation and review of the plan of action.

Two commenters recommended that the appraisal process include input from or participation of resident councils. Another commenter asked that tenants be permitted to submit information to HUD on the physical condition of the project. In response, the Department has provided in the Appraisal Guidelines opportunities for appropriate input before and during the project's inspection for capital needs. Two additional commenters suggested that HUD add a provision to the regulations to require that HUD consider any information submitted by a resident council. The Department will consider comments from resident councils prior to the inspection, but due to the statutory time frames established in section 213, it cannot lengthen the appraisal process in order to provide a formal comment period.

A similar comment asked that the appraisal process include input from the State housing finance agency. The Appraisal Guidelines provide that

appraisers may place reliance upon the assessment of conversion costs (over and above the capital needs assessment) determined by an appropriate State agency, if such an agency has been approved by the Secretary.

Three commenters suggested that the Appraisal Guidelines should require the consideration of local ordinances or restrictions. Reflecting the statute, the Appraisal Guidelines will require the consideration of local ordinances and use restrictions. The same three commenters said that the guidelines should allow some opportunity for local government or tenant input into the appraisal instructions. Since the Appraisal Guidelines are being published for comment, local and tenant groups have an opportunity to comment on them. If the commenters intended that these groups have the opportunity to comment on the appraisal instructions sent out to the appraisers of each project, the Department feels that this would be unnecessary and would lengthen the process without justification. As discussed earlier, the Department has provided for appropriate participation of State and local government entities and tenant groups prior to and during the inspection of the property.

A commenter stated that the estimator who will calculate the rehabilitation costs should obtain and consider any inspection reports issued by the State or local government or by HUD. The Appraisal Guidelines clarify that HUD Architectural and Engineering staff or contractors will determine rehabilitation costs. The Department would expect State and local government to provide any such input at or prior to the time of the joint inspection.

The Department received three comments recommending that the appraisal take into account as conversion costs restrictions imposed by LIHPHA itself on projects that prepay their mortgage or voluntarily terminate their mortgage insurance. Examples would include relocation costs for tenants, continued occupancy, etc. The Department has not accepted the recommendation, since the essential purpose of the LIHPHA appraisal process is to determine the value of the project in the absence of the constraints imposed by LIHPHA itself. However, State or local restrictions on conversion will be taken into account in the appraisal.

A commenter stated that the regulations do not take into account the fact that historical operating expenses may include extraordinary nonrecurring

expenses and that an owner's accountants may characterize some capital expenditures as operating expenses in order to avoid phantom income. The Appraisal Guidelines will instruct appraisers to eliminate extraordinary or nonrecurring expenses from the operating expense analysis. In cases where capital expenditures have been allowed by auditors as operating expenses, the Department will assume the allowance is valid.

The Department received two comments stating that the three year rule on operating expenses should be a guide only and that HUD should instruct appraisers to look at the real operating expenses expected after conversion. Since the three year rule on operating expenses is a statutory provision, the Department lacks the authority under LIHPHA to change this rule. Again, in the interests of determining "real operating expenses," the Department instructs appraisers in the Appraisal Guidelines to identify extraordinary or nonrecurring expenses. Section 248.111(e) has also been revised to clarify when and for what purposes appraisers may use the most recent year's operating expenses instead of the three year historical average.

A commenter also pointed out that in cases where the project's highest and best use is something other than residential rental use or cooperative ownership, it makes little sense to require a comparison to the three year average operating expenses of the property as a rental. The Department has accordingly revised the regulation to allow for the use of projected operating expenses alone in such cases.

The Department received three comments stating that if the cost of rehabilitation is to be deducted from value, then the replacement reserve funds available to be applied towards that cost must be offset against the deduction. The commenters suggest that the amount of the replacement reserves be included in the calculation of preservation value. The Department has decided not to include replacement reserves in the calculation of preservation value. As in other sales, upon the transfer of a property under LIHPHA, reserve for replacement and other escrows are either purchased or retained by the owner and thus not included as part of the value of the property.

One commenter suggested that special rehabilitation needs be considered when computing the preservation value. The need to pay for seismic reinforcement or removal of toxic materials, such as asbestos, are among the most critical examples. Lead-based paint and

asbestos abatement are included in the capital needs assessment performed by the Department. Other toxic material removal and seismic reinforcements will be included in the capital needs assessment if specified by State or local laws or codes.

One commenter stated that if the appraisal demonstrates that there is no preservation equity in the project, HUD's regulations do not specify the result. The Department has determined that if a project has no preservation equity, it cannot prepay, except pursuant to approval of a plan of action filed under § 248.141, nor is it eligible for any incentives under LIHPHA. LIHPHA is designed to provide owners with a fair market return on their investment through the receipt of incentives provided by HUD in exchange for maintaining low income affordability restrictions for the project's remaining useful life. If a project has no preservation equity, there is no basis on which to increase an owner's return. In these cases, if calculated, the new annual authorized return would be less than the current allowable distributions. Since owners have no preservation equity, permissible incentives under section 220(b) are, therefore, not necessary to provide owners with a fair market return on their investment. Owners, of course, could apply for such "incentives" as additional section 8 assistance or capital improvement loans under other program authorities designed to maintain the stock of HUD-assisted or insured loans.

Two commenters were concerned that priority purchasers were precluded from any involvement in setting the preservation value of a project. There is no provision in the statute for priority purchasers to be involved in setting the preservation value. The preservation value is established objectively in the appraisal process. Any purchaser in a voluntary or mandatory sale may submit an offer at less than the preservation value. Further, since HUD, with the possible exception of the five percent equity requirement, will provide insured financing and support the debt service on acquisitions, purchasers have less interest in the purchase price than they would in an ordinary transaction. Thus, the Department has decided not to accept the commenters' recommendation.

One commenter said that using the highest and best use appraisal for transfer preservation value, but the highest and best use as market rate rental for extension preservation value, will make selling the property more attractive to owners. Fair market values for transfer and extension are explicitly

defined by LIHPHA, and the Department has no authority to change them. In most situations, the highest and best use of a property will be market rate rental housing, so that the extension and transfer value will in fact be identical. It should be noted that other differences between the transfer and extension options will also influence owner decisions, e.g., tax consequences, processing times, and section 241(f) loan amounts.

Two commenters suggested that the owner should receive a copy of HUD's appraisal. The Department agrees, and has amended the regulation accordingly.

Fifteen comments requested that tenants should have the right to comment on the appraisals before they become final. The Department disagrees since this would make the appraisal process too burdensome and time-consuming. Furthermore, the determination of appraised value is best handled neither by HUD, nor the owner, nor the tenants, but by independent, professional appraisers. Tenants will be invited to HUD's inspection of the property for the capital needs assessment and may provide useful information about the physical condition and rehabilitation needs of the property, which will help the appraisers make accurate value determinations.

Section 213(a)(3) of the statute provides that the Secretary may approve an "extension" or "transfer" plan of action to receive incentives only based upon an appraisal that is not more than 30 months old. Five commenters were concerned that the appraisals could not be updated or adjusted during their thirty-month lifespan. Property values may change in this time period and owners could receive incentives based on an outdated property value. The Department recognizes the commenters' concerns but has been unable to formulate a workable and statutorily permissible mechanism to alleviate them. Preservation values drive the preservation process from the start. The resulting aggregate preservation rents are compared to the Federal cost limit to provide project-specific information to owners on their options. The property may be offered for sale for up to 15 months, and potential purchasers are informed of available assistance based on the preservation value and Federal cost limit. Reestimating value late in the process would change the ground rules for all parties concerned and unnecessarily lengthen the process. Adjusting preservation value would mean adjusting aggregate preservation rents and recomparing them to the Federal cost limit, which would also

have changed since the original analysis. Moreover, property values are not subject to simple inflation factors that could be applied to all properties. An attempt to reach agreement on reevaluation might require multiple appraisals. Finally, the Department believes that the language of section 213(a)(3) implies an assumption on the part of Congress that no readjustment of preservation values is warranted as long as the plan of action is approved within 30 months from the date of the appraisal.

Section 243.121 (Annual Authorized Return and Aggregate Preservation Rents)

Fifteen commenters, composed of six national and regional nonprofit organizations, two State agencies, three law firms representing owners, two owners, one consultant, and members of Congress contested the Department's position concerning the annual authorized return which an owner may receive on its equity in the project. Paragraph (a) of this section of the proposed rule sets an annual authorized return of 8% for owners who retain the project and receive incentives in exchange for extending the project's affordability restrictions. This provision repeats, almost verbatim, the language of section 214 of the statute. In addition, § 248.153(a)(1), which is based on section 219 of the statute, provides that the Commissioner shall "enter into such agreements as are necessary to enable the owner to receive the annual authorized return." The commenters have taken issue with the Department's interpretation of these provisions.

As noted in the preamble to the proposed rule, the Department's interpretation of the statute is that an owner is authorized to receive an 8% return, but is not guaranteed that return on an annual basis. The Department intends to set an annual authorized return of 8%, as mandated in section 214 of the statute, but cannot ensure that an owner will receive that level of return annually. The Department has not changed its position in the interim rule. The language of the statute, and the Conference Report at page 464, support the Department's interpretation by stating in section 219 that after HUD approves a plan of action, it should enter into such agreements so as to "enable" an owner to receive the annual authorized return. The common meaning of the term "enable" is to provide with a means, give an opportunity, make possible, or provide the capacity; it does not mean guarantee.

The Department, as set forth in paragraph (a) of this section, will set the

annual authorized return equal to 8% and will provide incentives sufficient to enable an owner to receive that return. Because the statute requires, in section 222, that rent increases be phased-in when the increase is substantial, over a minimum three-year period, it is expected that some owners, especially those with a large proportion of non-section 8 units or vacant units, or those which own projects requiring substantial rehabilitation, will not receive the full 8% return in the first three years after approval of the plan of action. The Department intends to mitigate this effect as much as possible by permitting owners who fall short of the 8% to withdraw funds from the project's residual receipts account and, for those projects with a mortgage insured or assisted under section 236 of the National Housing Act, by permitting a temporary deferral in remitting excess income until such time as the phased-in rents allow the owner to receive an 8% return.

Another commenter questioned whether an owner who has deferred its distributions prior to approval of the plan of action may realize those distributions under this subpart. The commenter proposed a system for permitting an owner to receive accrued distributions by excluding them from the rent stream established under the plan of action. HUD's response is that an owner may receive its accrued, unpaid distributions by withdrawing funds from the residual receipts account or from surplus cash with HUD approval.

One commenter expressed concern that the preamble to the proposed rule indicated that the annual authorized return would be funded from the residual receipts account. The commenter claimed that at the conclusion of the preservation process, there would not be any residual receipts. The Department expects that the residual receipts account will continue to be funded after preservation. The annual authorized return will primarily come out of the rent stream for the project. It is anticipated that residual receipts funds will be utilized to enable an owner to receive its return only when the rent stream is insufficient to provide an adequate return, such as during the phase-in period required for rent increases under § 248.145.

A commenter questioned which rent levels would be used in the underwriting of section 241 acquisition and equity loans. The Department would like to clarify that the two rent levels established under this section, extension preservation rents and transfer preservation rents, are hypothetical

estimates created by statute for the sole purpose, as noted in section 214(b) of LIHPHA, of comparison to the Federal cost limit. Extension and transfer preservation rents are not determinative of the actual rents established under § 248.145. Rents will include debt service on the section 241 acquisition or equity loan. However, the total gross rents for the project cannot exceed 120% of the existing FMR. Extension and transfer preservation rents bear no relationship to the underwriting of any loans. Underwriting will be based on the actual rents for the project which will be established in accordance with § 248.145.

With regard to subparagraphs (c)(2) and (d)(2), a commenter requested more specificity on how HUD will determine the amount of the rehabilitation loan. The amount of the loans will depend on the rehabilitation which is needed, based on a physical inspection of the project at the time the plan of action is approved. If a project proceeding under this subpart requires rehabilitation, an owner or purchaser may receive financing under the rehabilitation loan program in part 241 of this title, or through the capital improvements loan program set forth in part 219 of this title. Section 219.305 of title 24 of the CFR lists the rehabilitation expenses and energy improvements which may be covered by the capital improvements loan program.

The same commenter also suggested that the rehabilitation loan should include a one-time deposit to the project's replacement reserve fund as a sinking fund to protect against future rehabilitation costs. The Department expects that the monthly deposits made to the reserve for replacements fund will be sufficient to cover future project maintenance and the rehabilitation items, making the sinking fund unnecessary.

One commenter requested that the definition of adequate reserves in paragraph (e) be clarified in order to prevent arbitrary determinations. Adequate reserves will be determined in the same manner as in subpart C. The level of reserves is based on the amount of funds needed on a monthly basis to maintain the project in accordance with the housing quality standards of § 248.147.

Section 248.123 (Determination of Federal Cost Limit)

Section 215(a)(1) of LIHPHA mandates that the Department separate high cost projects from the remainder of the eligible low income housing inventory by using a Federal cost limit.

Twenty comments were received by the Department concerning the determination of relevant local markets, prevailing rents, and the Federal cost limit.

The term "relevant local market" is defined in both § 248.101 of this subpart and in the Appraisal Guidelines. The determination of what constitutes the relevant local market in which a specific eligible low income housing project is located is left up to the professional judgment of the appraiser retained by the Department under § 248.111. Section 248.101 of the proposed regulation defines a relevant local market as "identifiable as a distinct market area in which similar projects and units would effectively compete with the subject project, for potential tenants." It is expected that this market area will be smaller than that established by the Department to determine the section 8 existing fair market rents. This definition is expanded upon in the Appraisal Guidelines, which state that the relevant local market is a geographic area in which similar properties effectively compete with the subject project in the minds of probable, potential purchasers and users. In nonmetropolitan areas, if the appraiser ascertains that there is a lack of comparable rental housing, the appraiser may use comparables from noncontiguous localities as long as they are in the same county or parish and have similar demographics and market characteristics. If there are no comparables in the local market or noncontiguous areas, the appraiser will document that fact in his/her report.

One commenter suggested that paragraph (b) of this section be amended to delete the sentence permitting section 8 existing fair market rents to be the sole measure of the Federal cost limit if the appraiser determines that there are no comparables. HUD included this statement in the proposed rule in anticipation of situations where no comparables exist and where it is impossible to define a relevant local market and its prevailing rents. The Department sees no reason for amending this provision.

Two commenters questioned whether rent-controlled properties would be considered comparables for purposes of determining the prevailing rents for a relevant local market. The Department has decided that rent-controlled properties will be included as comparables to determine prevailing rents. Rent-controlled properties and eligible low income housing located in the same relevant local market area are

very likely to compete with each other for tenants, supporting the position that they are similar properties, and hence, comparable. Also, it is expected that the inclusion of rent-controlled properties will not have a substantial impact on prevailing rents in most metropolitan areas.

However, rent-controlled properties will only be included as comparables in the determination of a project's fair market value if the appraised project would be subject to rent control in the event of prepayment. It is the responsibility of the appraisers retained by HUD and the owner to determine whether a project would fall within the scope of a locality's rent control laws.

To assist in determining prevailing rents for a particular relevant local market, the Department will instruct appraisers to consult with the State and local governments in order to take advantage of any information they are able to provide. However, the Department has declined to make consultation with State and local governments over the appraisals mandatory, as six commenters suggested. HUD has also decided not to accept the suggestion that if a local government ascertains that there are no comparables for calculating prevailing rents, then only the section 8 existing fair market rents would be used to determine the Federal cost limit. The statutory language of section 215 leaves the determination of relevant local markets and prevailing rents up to HUD's discretion and, as the language of this section indicates, the Department will use information acquired by its appraiser and any other appropriate information in order to make the necessary calculations. HUD recognizes that State and local governments, as well as comments from community organizations and residents, may be a valuable source of information. HUD will take into consideration any information provided by the State and local government indicating the absence of comparables in a particular relevant local market; however, the State and local governments' determination will not be binding for purposes of determining the Federal cost limit.

In response to one comment, HUD believes that it is not necessary for the owner's appraiser to do a second relevant local market study to assist HUD in its determination of prevailing rents. A second study would be duplicative and would cause the owner to pay for additional work not required for determining the appraised value of the project. However, HUD will utilize, as appropriate, any information in the

owner's appraisal or data submitted by interested parties in addition to the relevant local market study done by the HUD-retained appraiser.

A concern was raised by two commenters that the section 8 existing fair market rents which are used to determine the Federal cost limit would erroneously be adjusted for utilities. Utilities will not be deducted from the published fair market rents which are used for purposes of calculating the Federal cost limit. It should be noted, however, that for other purposes in this subpart, including the calculation of the actual rents to be paid by the tenants, the fair market rents will be adjusted by a utility allowance. To avoid confusion, the definition of fair market rent in § 248.101 has been amended to clarify that for Federal cost limit purposes utilities will not be deducted. For consistency, the Appraisal Guidelines will also instruct the HUD appraiser to use gross rents, i.e., contract rent plus all tenant-paid utilities, in determining the relevant local market rents. Section 248.121(e)(2) has also been modified to clarify that, for purposes of comparison to the gross rents used in determining the Federal cost limit, project operating expenses in aggregate preservation rents must include the cost of utilities paid by the residents.

The Department acknowledges one commenter's concern that underestimated rehabilitation costs may artificially inflate a project's preservation value, but disagrees with the conclusion that this will cause the Federal cost limit to be exceeded and lead to conversion to market rate housing and displacement of low income tenants. In determining whether or not the Federal cost limit is exceeded, HUD will compare a project's preservation rents to 120% of the section 8 existing fair market rents and 120% of the prevailing rents. One component of preservation rents is debt service on a rehabilitation loan. If rehabilitation is underestimated, the loan amount will be lower, leading to a corresponding decrease in the preservation rents. This decrease should offset any increase in the preservation rent resulting from a potentially overestimated preservation value. Moreover, regardless of how preservation rents are calculated, conversion to market rate housing would result only pursuant to § 248.169, either because of a lack of appropriated funds or because a bona fide offer is not made, or under § 248.141.

Section 248.127 (Limitations on Action Pursuant to Federal Cost Limit)

The discussion in the preamble of the proposed rule, regarding limitations on action pursuant to the Federal cost limit, states that where an owner intends to retain a project whose extension preservation rent exceeds the Federal cost limit, that owner may receive incentives only up to an amount that can be supported by a projected income stream equal to the Federal cost limit. Three commenters disagree with this position, asserting that the Conference Report, at page 464, states that section 8 assistance could be set at more than 120%. The Department's position is that section 8 rents can exceed 120% of the fair market rent; however, the income stream under the plan of action may not exceed the Federal cost limit.

Section 248.131 (Information From the Commissioner)

The Department received sixteen comments concerning this provision of the proposed rule which sets forth the information the Department is required to send to an owner and the tenants of a project for which a notice of intent has been submitted under this subpart. Section 216 of LHPHRA requires that the Department supply the owner with any information necessary for preparation of a plan of action, including preservation values, preservation rents and a statement as to whether the aggregate preservation rents exceed the Federal cost limit. Two commenters noted that this information should be more extensive and should include audited financial statements, a current approved rent schedule and operating budget, a statement as to mortgage status, rent roll, physical inspection reports, and management reviews. The additional data mentioned by the commenters is already in the possession of the owner and will be made available to potential purchasers at the time they submit an expression of interest. The Department feels that it is not necessary to make this information available at an earlier stage in the process. For this reason, the Department declines to supply information which is not statutorily required.

Four commenters criticized the proposed rule's ambiguity in stating that this information shall be made "available to the tenants." In response to these comments, the Department has amended the proposed rule to state that information to be provided under this section will be sent to any tenant representatives who are known to the Department and if none exist, the information will be available from the

local HUD field office. Notices will also be posted in each affected building apprising tenants of the information and explaining from whom, and where, that information can be obtained. The Department has also decided, in response to four additional comments, to provide this information to that officer in the State or local government to whom the owner sent a notice of intent, in order to fulfill the requirement of § 248.179 that HUD consult with other interested parties prior to approving a plan of action under this subpart.

Section 248.133 (Second Notice of Intent)

The Department received twenty-four comments regarding the submission by owners of a second notice of intent to the Secretary. Four of these comments concerned notification of the tenants, with three of the four commenters suggesting that the Department adopt the stricter notice requirements set forth in § 248.105, governing the original notice of intent, and requiring that all tenants and each tenant representative receive a copy of the second notice of intent. The fourth commenter suggested that the second notice of intent be posted in the affected buildings and be delivered to any tenant representatives. The Department has determined that it would be appropriate to require that the second notice of intent be delivered to each tenant representative, and if no tenant representative is known to the owner, then to each occupied unit. HUD has determined that it is unnecessary to send the second notice of intent to each of the tenants if a tenant representative exists since the tenants have already received the original notice of intent and it is presumed that the representative will act on the tenants' behalf and disseminate this information for them. The rule has been amended accordingly.

One commenter recommended that the Department require an owner submitting a second notice of intent to provide evidence of the consent of its general and/or limited partners to the submission. The Department has decided not to accept this proposition. It is presumed that an owner taking action under this rule has the authority to do so and has the consent and agreement of its partners.

Seventeen commenters suggested that the second notice of intent to transfer the project be binding on an owner. Commenters also noted that if an owner does change its mind after submitting a second notice of intent, it should have to face financial penalties, pay the costs incurred by potential purchasers, or be prohibited from prepaying the mortgage or terminating the mortgage insurance

contract for a reasonable period of time. The concern raised by most of the commenters was that resident groups and nonprofit organizations would expend valuable time and funds attempting to put together a bona fide offer, and if an owner then decided not to sell the project, then these groups would needlessly lose that money.

The Department acknowledges the validity of this concern; however, there is no statutory basis for requiring that a second notice of intent be binding and the Department has no authority to impose financial penalties on owners who change their minds after submitting a second notice of intent. Since the statute does not require an owner who receives a bona fide offer under § 248.157 to accept that offer, HUD cannot add the additional requirement that the second notice of intent be binding in that circumstance. Under the mandatory sale provisions of § 248.161, however, once an owner who has submitted a second notice of intent receives a bona fide offer for sale at a price equal at least to the transfer preservation value, the owner is bound to accept that offer, but prior to receipt of an offer under § 248.161, an owner is free to change its mind.

It should be noted that if an owner proceeding under § 248.157 or § 248.161 changes its mind after filing the second notice of intent, and in the case of § 248.161, before receiving a bona fide offer, and decides to retain the project and seek incentives, then the owner must comply with the statutory requirement that a plan of action be submitted within six months of receiving the information provided by the Secretary pursuant to § 248.131. If the owner fails to submit a plan of action for incentives within that six-month period, then it must begin the process over again by submitting a new notice of intent under § 248.105. Owners should also be aware that § 248.135(g), which bars an owner from resubmitting a notice of intent for six months from the date the process is aborted, is also applicable to owners who decide to pursue incentives after filing a second notice of intent and then fail to submit a plan of action for incentives within the applicable time frame.

This section of the proposed rule has been amended to delete subparagraph (a)(2), which requires the submission of a second notice of intent if an owner plans to prepay the mortgage or terminate the mortgage insurance contract under § 248.141. As a commenter pointed out, this is not required under section 216(d) of the statute. HUD has determined that this

submission is not necessary since the tenants will be notified of this development when the plan of action is submitted.

Section 248.135 (Plans of Action)

This section discusses the submission of the plan of action. With respect to paragraph (b), which governs a joint submission by an owner and purchaser, the Department received six comments. Four commenters pointed out that if an owner terminates the use restrictions or retains the project with use restrictions in exchange for incentives, it has six months from receipt of the information provided by the Department under § 248.131 to submit a plan of action, but if the owner transfers the project under § 248.157 or § 248.161, it only has 90 days after accepting a bona fide offer in which to jointly submit a plan of action with the purchaser. The commenters claimed that the proposed timeframe for the joint submission is unreasonable and suggested extending it to six months. In order to treat owners equitably, regardless of whether they retain or sell the project, and in recognition of the fact that a joint submission may be difficult to prepare, the Department has amended paragraph (b) to provide the same six month period for submission of a plan of action to owners who retain the project and to those who sell.

Owner and purchasers should note that if a plan of action is not submitted within the applicable six month period, the notice of intent filed under § 248.105 becomes ineffective and the owner must wait six months before being eligible to resubmit the notice. Although one commenter claims that this result is inequitable if the failure to submit the plan of action was due to the fault of the purchaser or circumstances beyond the owner's control, this penalty is one that is statutorily imposed under section 217(a)(3) of LIHPHA and the Department does not have the discretion to waive it. Owners and purchasers are also cautioned that if a bona fide offer to purchase the project is accepted late in the 15 month marketing period, it would be in the best interests of both parties to submit a plan of action as soon as possible during the six month submission period, given the fact that LIHPHA authorizes the Department to accept only plans of action based on appraisals which are not more than thirty months old.

One commenter suggested that if an owner and purchaser cannot jointly agree on a plan of action, the owner should have the right to submit the plan alone and control the plan of action process. If an owner is selling a project,

the owner's primary interest in the transaction will be its return on the sale, which is established through the appraisal process; the owner's interest in the aspects of the plan of action which affect the operation of the project after the sale is minimal. Therefore, Department has decided to retain the requirement that the plan of action be jointly submitted. If the owner and purchaser are unable to submit a plan of action within the applicable time period, then the transaction will not be completed and the owner will be forced to file a new notice of intent after waiting the six months specified in paragraph (g) of this section.

One commenter recommended that procedures be established that ensure the purchaser's role in selecting professionals to prepare the plan of action. Another suggested that primary responsibility for demonstrating the feasibility of the sales transaction should rest with the purchaser, but the owner would ultimately control the contents of the submission. Still another commenter recommended that the plan of action be submitted by a qualified housing counseling agency that serves a low income clientele, rather than by the owner's staff or a housing consultant. The statute, under section 217, places the responsibility of submitting a plan of action with the owner, or in the case of a transfer, with the owner and the purchaser. The Department sees no need to further regulate the manner in which the plan of action is prepared. If an owner and purchaser are unable to submit a plan of action, the owner, as previously noted, will be forced to begin the process again by submitting a new notice of intent. The purchaser will be unable to purchase the project for at least another year and a half, until the six month waiting period, under paragraph (g), for submitting a new notice of intent expires, new appraisals are conducted, and the project is again offered for sale. This, in itself, should be a sufficient inducement to ensure cooperation by both parties.

Paragraph (c) of the proposed rule requires that the plan of action be submitted to the chief executive officer of the appropriate State or local government. This paragraph has been amended to conform to the changes made in §§ 248.131 and 248.133, which require that the information from the Commissioner and the second notice of intent be submitted to that officer of the appropriate State or local government entity to whom the notice of intent was submitted under § 248.105. A commenter also proposed that an owner should provide certified documentation that the

plan of action has been reviewed by a unit of local government. Section 217(a)(2) requires the appropriate State or local government entity to review any plans of action which are submitted by an owner and this requirement has been included in this paragraph. The Department has declined to require a certification, however, since it does not have the authority under LIHPHA to enforce this requirement and because the Department believes that an owner should not be penalized for another party's failure to comply with the statute. As long as the owner properly submits the plan of action to the specified parties, the owner has fulfilled its obligations under this paragraph.

Three commenters requested that State or local governments be notified if a plan of action submitted to HUD will not maintain the use restrictions on the project for its remaining useful life or if the plan contemplates the resale of the project by tenants for a profit. With the exception of projects purchased by tenants pursuant to a resident homeownership program under § 248.173, all plans of action to extend affordability restrictions must provide that the restrictions will remain in place for the project's remaining useful life. Additionally, under § 248.173(h)(3)(ii) a resident may not receive a profit from the resale of its unit for at least six years from the time it purchases the unit. In light of the foregoing, and since the State or local government will receive a copy of the plan of action upon its submission to HUD and the appropriate State or local government agency must review the plan of action, the Department sees no need to impose an additional notification burden under this section.

Paragraph (c) reiterates the statutory language of section 217(a)(2), requiring the "appropriate" State or local government agency to review any plans of action submitted to the Department. One commenter requested guidance in determining the appropriate agency. The notification requirements under LIHPHA require submissions to be made to the State or local government in whose jurisdiction the project is located. The Department recognizes that delivering the plan of action to the State or local government in the jurisdiction in which the project is located may not ensure that the "appropriate" agency is provided with the plan of action for review. In order to ensure that the statutory purpose is carried out, the Department itself will forward copies of the plans of action to the appropriate State or local government agency if that

agency did not receive a copy from the owner.

The Department received eleven comments contending that tenants and the State or local governments should have the right to comment on any plans of action submitted to the Department. In response to these comments, the Department has amended the proposed rule to provide a sixty-day comment period for tenants and State and local governments. This period will begin on the date of HUD's receipt of the plan of action, which should be sent simultaneously to the tenants and the State or local government. This comment period will not extend the processing time under this subpart because the sixty-day comment period will begin on the same date as the six-month period, provided under § 248.149(b), for Departmental approval of the plan of action. If the plan of action is revised, the tenants and the State or local government will be provided with a copy of the changes, pursuant to paragraph (c), and will be given a reasonable opportunity to comment on the revision. The Department will not approve a plan of action before the end of the sixty-day comment period, and in making its determination, the Department will take into account any comments received during that period. Findings made by the State or local government will be considered in accordance with section 228 of the statute, but they will not be binding on HUD; decisions made by State agencies may be binding, under the statute, only when the Department has delegated authority to that State pursuant to section 227 of LIHPHA. Similarly, tenant approval of the plan of action is not required under the statute and it is impractical for the Department to respond to each tenant comment, but these comments will be given serious consideration in the Department's examination of the plan of action.

Tenant representatives may take part in negotiations between the owner and HUD on the plan of action, if the plan of action is jointly submitted by the owner and the tenants in connection with a sale of the project to the tenants. If the tenants are not purchasing the project, the Department sees no justification for participation by tenant representatives, especially since tenants, as well as tenant representatives, have the opportunity to comment on the plan of action.

Seventeen commenters advocated that HUD provide tenants with access to the plan of action. Comments ranged from requesting that each tenant be given a copy of the full plan of action to

recommending that the plan be available on site and copying permitted free of charge. The proposed rule provides that the owner shall post a summary of the plan of action in each occupied building, provide the full plan to any tenant representatives, and make a copy available in a convenient location, as well as provide a copy to the chief executive officer of the State or local government. The Department has amended this provision to require that the posted summary indicate the name, address and telephone number of any tenant representatives and personnel in the local HUD field office who possess a copy of the plan of action, and a statement that tenants may contact these persons to obtain or review a copy of the plan. In addition to sending the plan to any tenant representatives and the State or local government, the owner must make a copy of the plan, with revisions, available to tenants for copying in the on-site office, or if an office is not available, in the location where rents are collected, during normal business hours. Owners shall permit tenants to photocopy the plan of action, or shall provide copies at a reasonable cost. Any revisions made to the plan of action, including any deficiency letters issued by the Department under § 248.149(a), shall be submitted to the tenants and State or local government in the same manner as the original plan of action. The Department will not require copies of the plan of action to be given to every tenant, or require posting of the entire plan of action, since plans of action are generally quite lengthy and the interim rule provides sufficient opportunity for tenant access to the plan of action.

According to four commenters, tenants should have the right to inspect and copy all supporting documentation to the plan of action. The plan of action is intended to be a complete, self-contained document, containing all of the information necessary for the Department to make its determinations under this subpart. All supporting documentation is included in the plan of action itself and is available to the tenants in the manner provided under paragraph (c).

One commenter suggested that if an owner submits a plan of action to terminate the affordability restrictions, given the fact that the purpose of the statute is to restrict terminations, the contents of the plan should include more detailed documentation than that required under paragraph (d) of this section. The commenter did not specify what type of documentation should be required, but the Department believes

that the information requested in this paragraph of the proposed rule is sufficient to enable HUD to determine whether or not the owner is eligible to prepay the mortgage or terminate the mortgage insurance contract pursuant to § 248.141. The same commenter also recommended that someone other than the owner, its staff, or consultant, such as a State or local government, submit the assessment, under subparagraph (d)(4), of the effect the prepayment or termination will have on existing tenants. Section 228 of LIHPHA requires the Department to confer with, and give consideration to, the views of any State or local government agency when making determinations under the statute. The Department recognizes that State and local governments are valuable sources of information concerning housing located in their jurisdictions and the Department encourages the submission of relevant data, as well as comments, regarding any plans of action submitted under this subpart. The Department fully intends to consult with these agencies prior to approving any plans of action to prepay the mortgage or terminate the mortgage insurance contract.

Subparagraph (e)(2) of this section requires an owner to submit in its plan of action package a description of the Federal incentives requested to address any physical deficiencies of the project. Three commenters expressed concern that the rehabilitation costs for the project should not be based on the costs determined in the appraisal process under § 248.111, but should be based on information contained in the plan of action and on current cost considerations. In response, the Department notes that the rehabilitation costs determined in the capital needs assessment utilized in the appraisals, while intended to be a fair assessment of rehabilitation costs, are for the purpose of calculating preservation rents and preservation equity, and not for the purpose of actually funding rehabilitation as part of a plan of action. The scope of the capital needs assessment may not always be sufficient to reveal the actual costs necessary to rehabilitate the project to conform with housing quality standards or to estimate the actual operating costs of the project after rehabilitation. The Department recognizes that these costs may be underestimated in the assessment or the estimates may be outdated by the time of plan of action approval. For these reasons, the initial determination made in the appraisals will be an initial basis for estimating rehabilitation needs and costs, but will

not be binding for purposes of funding rehabilitation and supporting operating expenses under a plan of action.

Nine commenters questioned the requirement in subparagraph (e)(5) of this section, that an owner submit as part of the plan of action an income profile of the tenants as of January 1, 1987 and as of the date of filing of the plan of action. The reason for this submission is to fulfill the statutory directive of section 222(a)(2)(F)(i) which authorizes the Department to approve plans of action extending affordability restrictions only if the project maintains the same proportions of very low, low and moderate income families or persons as resided in the project as of January 1, 1987 or as of the date of plan of action approval, whichever date results in the highest proportion of very low income families. As these commenters pointed out, however, the Department only requires that income profiles be retained by owners for a period of three years, so it is very likely that many owners have disposed of the January 1, 1987 profile, making it impossible for them to submit this information as part of the plan of action. It is impossible for the Department to reconstruct the missing income profiles since HUD does not keep data on all tenants.

One commenter suggested that to remedy this problem, for those projects where an income profile for January 1, 1987 is unavailable, HUD should set the proportion of very low income tenants, as of that date, at fifty percent. Another commenter suggested assuming a one hundred percent very low income tenancy. The Department believes, however, that the implementation of these suggestions would be contrary to the intent of the statute. Instead, where an owner certifies that the January 1, 1987 tenant income profile is unavailable, the Department will require that the owner submit an income profile for January 1, 1988, and if that is unavailable, for January 1, 1989. The affordability restrictions will then be maintained on the project in the same proportions of very low, low and moderate income tenants as resided in the project as of the date the plan of action is approved or the date of the earlier profile, whichever has the greatest number of very low income tenants. In order to minimize the need for this policy, the Department will include a directive in its administrative guidance requiring owners who still possess the January 1, 1987, the January 1, 1988 or the January 1, 1989 profiles to retain them for purposes of submitting a plan of action.

The Department received one comment encouraging HUD to examine whether or not project management caused distortion of the tenant income profiles by engaging in illegal tenant selection practices. The Department's position is that this type of review is not germane to the preservation process and HUD presumes that its customary management reviews will reveal any irregularities on the part of project management. In response to another comment, the Department is unable to internally examine the authenticity of an owner's submissions under this section since HUD does not have the necessary data for comparison. However, pursuant to the statute's directive in section 228, the Department will consider any data submitted by State or local governments which supports or conflicts with the owner's submissions.

For purposes of maximizing the number of eligible low income housing units which are preserved for the use of very low income families and persons, four commenters suggested that any units which were vacant on January 1, 1987 and on the date of submission of the plan of action should be deemed very low income units. The Department has decided to adhere to its practice in implementing ELIHPA of allocating vacant units in proportion to the share of very low, low and moderate income tenants residing in the occupied units as of the date of the profile. In filling these vacancies, owners must rent the units in a manner that will maintain the tenant income profile for the remaining useful life of the project. This method of filling vacancies represents a deviation from the Department's usual policy governing tenant selection for units receiving section 8 assistance, because under this subpart a vacated section 8 unit may not be filled with a section 8 recipient if it is necessary to place a tenant who is ineligible for section 8 assistance in the unit in order to maintain the project's proportionality.

One commenter noted that section 222(a)(2)(F)(i) tracks the language in ELIHPA, requiring that the profile used with the plan of action be the one which has the highest proportion of very low income tenants. The commenter argues that the apparent purpose for this requirement under ELIHPA is to maximize the amount of section 8 assistance provided to the owner under a plan of action. However, under LIHPA, the Department is authorized to provide section 8 assistance to low income tenants as well as very low income residents. In some circumstances, this may result in less section 8 assistance being provided to a

particular project than would be the case if the profile with a higher number of low income tenants is used. The commenter claims that Congress overlooked this result in drafting the statute. However, this outcome may indicate that the purpose of choosing the profile with the most very low income tenants is not to maximize section 8 assistance, but to preserve the greatest number of units for the tenants with the lowest incomes, i.e., those who are most in need. Regardless of congressional intent, the statute is clear that the profile to be used in the plan of action is the one with the highest proportion of very low income tenants and the Department perceives no justification for deviating from this standard.

As part of the plan of action submission under paragraph (e), one commenter suggested that a nonprofit or resident council purchaser should certify that it has retained an experienced management agent who has successfully managed low and moderate income housing, is familiar with HUD procedures and has the capacity to manage the rehabilitation, marketing and relocation contemplated under this subpart. The Department has determined that it is not necessary to include this requirement in the regulation since the regulatory agreement which a nonprofit or resident council purchaser will be required to execute as part of the transfer already states that any management agent must be acceptable to the Department.

Paragraph (h) of this section has been amended in response to two comments recommending that the State or local government be notified of the approval of a plan of action. The Department will notify the appropriate agency at the same time, and in the same manner, that it notifies the tenants of such approval.

Section 248.141 (Criteria for Approval of a Plan of Action Involving Prepayment or Voluntary Termination)

This section requires the Department to decide whether prepayment of the mortgage or termination of the mortgage insurance contract would create hardship for current tenants, whether other affordable housing is readily available, and whether the general supply of low income housing will be materially affected by such prepayment or termination. One commenter requested guidance as to how the Department would make these determinations. The written findings which this section mandates are identical to the findings the Department must make in § 248.221, pursuant to subpart C, and the Department will use

the same methods and procedures in both subparts. HUD's administrative guidelines will elaborate upon the regulatory criterion.

Pursuant to this section, the Department may have to determine whether there is comparable, affordable housing for tenants who may be displaced if a plan of action is approved. If an owner agrees to comply with the requirements of section 218(a)(1)(A), including the maintenance of rent restrictions and continued occupancy for current tenants, then the Department does not have to make this finding. One commenter stated that when determining whether housing is "comparable," the Department should take into consideration the special needs of the tenants, such as elderly residents, and include as comparable housing only those projects which can meet the tenants' needs and are suitable to the tenants' particular situation. The Department acknowledges that, for purposes of this section, "comparable" means more than just affordable. When determining whether there is adequate, comparable housing, under paragraph (a) of this section, the Department will take into consideration the requirements of special needs tenants, as that term is defined in § 248.101, who reside in the affected project. Housing will be deemed comparable only if the Department determines it to be suitable for those tenants who would be displaced if a plan of action involving prepayment or termination is approved.

The Department's position in the proposed rule, that tenants of projects for which the mortgage is prepaid or the insurance terminated under this section are not entitled to the tenant protections set forth in § 248.165, was contested by three commenters. As the Department explained in the preamble to the proposed rule, once the Department makes the findings required under this section, an owner is permitted to terminate the affordability restrictions on the project and further compliance with this subpart by the owner is not required. The Department's approval of a plan of action under this section signifies that the owner has demonstrated that its prepayment or termination will not create a significant hardship on current tenants; that there is a sufficient supply of readily available comparable housing; that low income families will be able to find affordable, decent, safe and sanitary housing near employment opportunities; and that housing opportunities for minorities in the community will not be adversely affected by the prepayment or termination. Approval of the plan

implies that the protections provided for displaced tenants under § 248.165 are not necessary for the tenants residing in the affected project.

It should be noted that income eligible tenants residing in a project which is the subject of a prepayment or termination may receive section 8 certificates or vouchers to enable them to continue residing in the project or to relocate to other suitable housing. If these tenants are displaced, they have priority for receiving section 8 assistance pursuant to § 886.132 of this title.

If necessary to protect current tenants, the Department will require the execution by the owner of a use agreement, containing restrictions enabling current tenants to continue living at the project at rents set forth in section 218(a)(1)(A). This use agreement is enforceable by the tenants, as well as by the Department. While local governments and fair housing groups would not have standing to enforce the use agreement, they may bring violations of the agreement to the attention of the Department. A suggestion was received from one commenter that HUD should perform audits regularly and provide tenants, local fair housing groups and the local government with the right to notice and comment on the audit process in order to enforce such use restrictions. No scheduled audits will be performed to enforce the use restrictions on projects for which the mortgage is prepaid or the insurance terminated.

A commenter suggested that HUD work closely with, and obtain data from, local governments, where HUD is considering permitting an owner to terminate the affordability restrictions on the project. Another commenter stated that data received from an owner should be verified as to its accuracy and it should be determined whether the owner's submission is consistent with the community's perception of its needs. As noted in the previous section, the owner will provide the State or local government with a copy of the plan of action and the Department will provide the appropriate reviewing agency with a copy. These entities will then have sixty days in which to submit comments and any additional data to the Department for consideration. Also, the Department will confer with State and local government agencies, in accordance with section 228 of LIHPHA, prior to making any determinations under this section.

A commenter claimed that the Department has no statutory basis for conditioning approval of a plan of action, under this section or § 248.145,

on the absence of open findings of noncompliance with title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973 and all regulations promulgated under these statutes. While there is no explicit authority in LIHPHA permitting the Department to deny approval of a plan of action if an owner is found to be in noncompliance with any of the foregoing statutes, this requirement is consistent with the Department's obligations under the authorities cited above to affirmatively further fair housing. Furthermore, the Department cannot approve a plan of action permitting prepayment of the mortgage or termination of the mortgage insurance contract unless it finds that such prepayment or termination will not adversely affect the housing opportunities of minorities. An owner's failure to comply with the civil rights legislation listed above may support an inference that the prepayment or termination will produce a negative impact on minorities.

It should be noted owners of eligible low income housing must continue to comply with the Fair Housing Act and implementing regulations regardless of whether or not they prepay the mortgage or terminate the mortgage insurance contract on the project.

Section 248.145 (Criteria for Approval of a Plan of Action Involving Incentives)

Section 222(e) of LIHPHA directs the Department, if feasible, to provide incentives only to owners of projects in those rental markets where there is an inadequate supply of decent, affordable housing, in order to prevent owners from receiving "windfall profits." The Department submitted a report to Congress on April 4, 1991 containing its findings and concluding that a windfall profits test is feasible. The Department intends to implement the windfall profits test in a separate issuance which will be published for notice and comment. In response to the proposed rule, the Department received forty-three comments concerning windfall profits and these comments have been given full consideration in developing the windfall profits test.

A commenter suggested that the Department abandon the "fair market rent" standard set forth in subparagraph (a)(5) and instead require that tenants pay the lesser of 30% of adjusted income or the preservation rent. The statute at section 222(a)(2)(D) explicitly requires that current tenants not pay more than 30% of their adjusted income or the

published existing fair market rent. Additionally, the statute provides in section 214(b) that preservation rents are aggregate rents, not unit rents, and are used solely for the purpose of comparison with the Federal cost limit, implying that Congress did not intend the preservation rents to be the actual rents paid by the tenants. At the time of plan of action approval, the Department will determine the actual rents needed to support operating expenses, adequate reserves and rehabilitation needs.

The Department received eighteen comments concerning the phasing-in of rents for current tenants under subparagraph (a)(6) of this section. The most frequent responses were that the phase-in period should be extended, and that rent increases in any given year should be capped.

The proposed rule tracks the statutory language of section 222(a)(2)(E), which provides that rent increases of 10 to 30% will be phased in at not more than 10% per year and rent increases of more than 30% will be phased in equally over not less than three years. The statute clearly defines the parameters for the rent phase-in, providing the Department with no discretion to limit annual increases to 5% or 8%, or 10% in the case of very low income tenants, or 15% for increases greater than 30%, as commenters suggested. The statute places a cap of 10% on yearly increases if the total rent increase does not exceed 30%, but implicitly contemplates that if the total rent increase is greater than 30%, tenants may be faced with an annual increase of more than 10%. In order to decrease the burden on the tenants, an owner or purchaser may agree to phase in a rent increase over a period of more than three years, at its option. The Department also notes, in response to another comment, that all current tenants, including those of moderate income, will be subject to the phase-in provisions of this section.

Seven comments were received regarding subparagraph (a)(7) of this section, which authorizes the Department to provide section 8 assistance, if available, to current very low and low income tenants not already receiving section 8 assistance, who otherwise may experience adverse effects due to the implementation of a plan of action. To carry out this section, the Department will execute a section 8 housing assistance payments contract providing subsidy sufficient to cover the number of very low and low income tenants residing in the project at the time of plan of action approval or at the time of the tenant income profile submitted under § 248.135(e)(5),

whichever is higher. If the number of very low income tenants was higher at the time of the earlier profile, then the owner will be required to replace low and moderate income tenants who move out with very low income tenants. There is no need to reserve additional section 8 certificates, as one commenter suggested, since the assistance provided under this section is project-based.

Two commenters stated that there is no justification for restricting section 8 assistance to the amount established at the time of plan of action approval and that owners who wish to rent to additional very low and low income tenants should be entitled to a proportionate increase in section 8 assistance. Section 222(a)(2)(E)(ii) directs that section 8 assistance be provided to current tenants. At the time the plan of action is approved, if section 8 assistance is needed and is available, the Department will execute a housing assistance payments contract for the provision of this assistance. If a section 8 contract already exists, but is inadequate to meet the project's needs, the Department will also amend this contract in order to implement the plan of action. The statute does not obligate the Department to provide additional section 8 assistance to future very low and low income tenants. Future very low or low income tenants not covered by the new or amended section 8 housing assistance payments contract may apply for section 8 certificates or vouchers to subsidize its rent payments.

A commenter suggested that section 8 assistance should be provided to subsidize all of the units in a project in order to ensure sufficient rental income to support all acquisition costs. The statute only authorizes the Department to provide section 8 assistance to very low and low income tenants; therefore units occupied by moderate income and market-rate tenants will not be eligible for this assistance. However, the Department can provide section 8 assistance in excess of the section 8 existing fair market rent, as long as the total rent stream for the project does not exceed the Federal cost limit. If the rental income is still inadequate to pay for acquisition costs, the Department may provide grants to priority purchasers under § 248.157 and to qualified purchasers under § 248.161. The Department expects that the section 8 assistance provided to very low and low income tenants, along with the rents paid by moderate income and market rate tenants, will be sufficient to support the costs of the entire project since, for eligible low income housing, on average,

an estimated 93% of the tenants currently residing in eligible low income housing are eligible for project-based section 8 assistance pursuant to this section.

Paragraph (a)(8) of the proposed rule permits the Department to approve rent levels for future tenants, including moderate income tenants. One commenter objected to providing future tenants with the same protections given to current tenants, claiming that this would make the project financially infeasible. Section 612 of the National Affordable Housing Act restricts the rents which can be charged to moderate income and market-rate tenants, capping rents at 30% of the adjusted income or the section 8 fair market rent, whichever is lower. This restriction applies to projects insured or assisted under section 236 and section 221(d)(3) of the National Housing Act, and, while independent of the preservation program, also applies to moderate income and market-rate tenants of eligible low income housing, which is financed by section 221 or section 236. Thus, the rent caps established by HUD for future tenants are consistent with section 612.

Section 222(a)(2)(G) of LIHPHA requires that future rent adjustments for projects receiving incentives under a plan of action be made by applying an annual factor, to be determined by the Secretary, to the portion of rent attributable to operating expenses for the project. The Department received seventeen comments concerning the implementation of the annual adjustment factor under paragraph (a)(9) of this section. Four commenters merely requested further guidance, while others suggested specific methodology for determining the factor. The annual adjustment factor and the methodology for determining the factor will be issued by the Department as a separate administrative guidance.

The Department has decided to rely on the Consumer Price Index-Urban ("CPI-U") data collected by the Bureau of Labor Statistics, United States Department of Labor, to implement the annual adjustment factor method of adjusting the operating cost component of rents. These data are available on a reasonably current basis for the four census regions and for 74 metropolitan areas and the State of Hawaii, covering about two-thirds of the nation's population. Both national data for the four census regions and metropolitan data are usually available within three months of the most recent survey period. The national sample for the four census regions is done on a monthly basis, and

the metropolitan samples are done every three or four months. Regional factors will be used only if a project is not covered by one of the 74 CPI local data areas.

This approach provides for operating cost increases using factors that reflect changes in the underlying components of operating costs. The two major components of operating costs are utility and non-utility costs. These components are available on both regional and metropolitan levels. Non-utility costs include administrative expenses, operating and maintenance expenses, and taxes and insurance. The non-utility operating cost increase will be set equal to the overall change in the cost of all goods and services during the past year, as measured by the CPI-U "All Items" factor for the region or metropolitan area, less the weight for the utility change component for the area. The utility change component will be based on changes in the residential energy cost CPI-U factor for the region or metropolitan area (i.e., the CPI-U "Housing, Fuel and Other Utilities" factor). Both the utility and non-utility factors will be separately applied to the project's utility and non-utility operating cost components. Consumer Price Index data may be found in the "CPI Detailed Report(s)" published by the Bureau of Labor Statistics, U.S. Department of Labor.

In order to take extraordinary operating expenses into account, the Department has provided for an appeals mechanism. Appeals may be made by owners for the utility or non-utility change factors provided. Owners wishing to appeal must submit their entire project budgets to the Department for review. Documentation showing that a single component of operating expenses, such as insurance or taxes, increased faster than the CPI non-utility factor would not, of itself, be considered a basis for approving a higher annual adjustment factor. The Department will grant an owner a higher factor only if the total amount of all actual costs and expenses of the project exceed the aggregate change provided by the CPI-U factors.

A commenter stated that until HUD develops an annual adjustment system, it should use a property-specific budget-based rent increase. The Department will have in place an annual adjustment factor system by the time that it is needed for the first plans of action approved under LIHPHA, so there is no need for any interim budget-based system for rent increases.

Three commenters were concerned that the regulation did not contain a mechanism for determining rent

increases for purchasers. The annual adjustment factor will apply to purchasers as well as to owners extending the use of eligible low income housing.

Two commenters asked that HUD develop a project-based cost approach for making operating cost annual adjustment factors to section 8 rents. The Department declines to use such an approach, except on an appeals basis, since it has no authority to do so under LIHPHA.

The Department received three comments stating that HUD should publish the methodology utilized in determining the rent adjustment factor so that underwriters can adjust their underwriting procedures. The commenters recommended that this method should be flexible and responsive to changing circumstances. The determination of the rent adjustment factor is flexible since it provides an owner with an appeals process based on a project budget review if it believes it has incurred extraordinary expenses. Three other commenters indicated their preference for budget-based operating expense increases. The Department can only respond, however, that the combination of the statutorily required annual adjustment factor and the opportunity for budget-based appeals will fairly address all their concerns.

A commenter suggested that the annual adjustment factor for rents should be based on the current section 8 annual adjustment factor. The Department rejects this suggestion because section 8 annual adjustment factors reflect changes in the rental market supply and demand conditions, and have no necessary relationship to changes in operating costs. For instance, in a depressed market, operating costs often continue to increase even though rents are stable or decreasing.

The Department received one comment asking whether, if an annual adjustment factor is used, the rent increase will be processed in the same manner as the existing section 8 special adjustments, i.e., only for taxes, utilities, and insurance. As discussed, the annual adjustment factor is applied to operating expenses as a whole.

Three commenters suggested that any annual adjustment factor also be applied to replacement reserve contributions. Replacement reserve contributions are not included as operating expenses and thus are not subject to the annual adjustment factor. Changes to replacement reserve contributions may be requested of the local HUD field office which will review

the adequacy of the existing level of contribution.

Three commenters asked that the annual adjustment factor be determined for geographic regions. As described above, the Department has decided to use data for the adjustment factor that is available on a fairly current basis for the four census regions and for 72 metropolitan areas that cover about two-thirds of the nation's population. Another commenter suggested that in developing an annual adjustment factor, HUD should allow each area office to modify the factor to reflect unusual operating costs in a particular geographic region. The Department has decided to handle geographic variations with the consistently available CPI data described earlier. Again, an owner who has experienced unusual operating costs may use the appeals process that the Department has created for this purpose.

Five commenters requested clarification of paragraph (a)(10) of this section, which permits any savings from reductions in operating expenses due to management efficiencies to be deposited in the project's reserve for replacements account, and then distributed to the owner with HUD approval. The commenters wondered how savings from reductions in operating expenses would be calculated. The Department believes that this provision, set forth in section 222(a)(2)(H) of LIHPHA, is a remnant from an earlier version of the statute, which provided for budget-based rent increases. With the budget method, it would be simple to determine reductions in operating expenses and decide how much of the reduction was due to management efficiencies. However, the use of an annual adjustment factor to increase operating expenses, makes it difficult to determine what portion of any savings are due to management efficiencies. For this reason, the Department will not make the determination required under this section and will seek a technical amendment of this section of the statute. Such savings instead will go into the residual receipts account.

One commenter objected to, and one commenter approved of, the requirement that in order for the Department to approve a plan of action for a project, there must be no open findings of noncompliance with the fair housing and civil rights legislation and regulations listed in paragraph (a)(12). The Department has retained this requirement, for the reasons noted in the previous section, discussing § 248.141. The Department reiterates that owners of eligible low income housing must continue to comply with the civil rights

legislation and regulations listed in this paragraph of the interim rule after approval of a plan of action.

One commenter stated that the proposed rule did not make it clear under what circumstances a prepayment or termination could occur in connection with a plan of action for incentives and recommended that paragraph (c), which refers to prepayments and terminations, be deleted. Pursuant to section 211(a) of LIHPHA, an owner of eligible low income housing may prepay its mortgage or terminate the mortgage insurance contract only in accordance with a plan of action which has been approved by the Department. When the Department approves a plan of action for incentives, it does not prohibit mortgage prepayment or insurance termination, but in exchange for providing incentives, places restrictions on the use of the property in the event of prepayment or termination. This is the purpose of the agreements referred to in paragraph (c) of this section, which are executed at the time of approval of the plan of action. If an owner prepays or terminates after a plan of action for incentives has been approved, the regulatory agreement on the project will no longer be effective, but a use agreement, containing the affordability restrictions approved in the plan of action as well as other tenant protections, will continue to bind the project for its remaining useful life. Although prepayment occurs, the project will still be preserved for low income use, in accordance with the purpose of LIHPHA.

A commenter requested that paragraph (d) permit State or local governments, as well as owners, to appeal a determination of remaining useful life. Section 222(c)(3) of LIHPHA specifically provides for an owner's appeal of the Department's determination of the project's remaining useful life. However, the owner may not exercise this appeal right until fifty years after approval of the plan of action. Because an appeals mechanism is not needed at this time, the Department will delay formulating such a system until a later date. At that time, HUD will consider extending this right to State and local governments.

Section 248.147 (Housing Standards)

A commenter suggested that this section, requiring an owner to "maintain the project in accordance with local codes or housing quality standards, whichever is stricter," is too permissive and that the owner must not merely agree to maintain the project, but must also demonstrate that the project is in compliance with the housing standards

as a condition of receiving incentives. LIHPHA assumes that a project will be in compliance with housing standards as part of the rehabilitation plan required for approval of a plan of action involving incentives. It is the intent of the Department to examine projects that are in violation of housing code standards at the time of plan of action review and to require owners to accept incentives such as a section 241 rehabilitation loan or a flexible subsidy capital improvements loan in order to cure these violations and secure approval of the plan of action. Pursuant to § 248.145(b), an owner who retains the project under this subpart may not receive any incentives or distributions, except those designed to correct the project's deficiencies, until the project is in accord with the housing quality standards. This should provide sufficient assurance that an owner will bring the project up to the standards required under this section. If the owner fails to do so, several sanctions are available. The owner's annual distribution can be denied or limited and the disbursements from an equity take-out loan can be withheld and used for repair of the project.

Two commenters wanted to allow tenants and State or local governments the opportunity to trigger sanctions against an owner if it fails to comply with the housing quality standards. The Department will receive complaints from tenants or governmental entities of building deficiencies and violations of building codes and will then impose sanctions where warranted.

The question of whether sanctions will be effective against nonprofit purchasers was raised by one commenter. Sanctions could trigger a default on the section 241(f) acquisition loan and on the original project mortgage. While discretion will be exercised, HUD will use whatever sanctions it considers appropriate to enforce the housing quality standards. HUD recognizes that its sanctions could trigger a loan default and cause a mortgage assignment, yet HUD would carry out such a sanction if it determined that this would be the only method for maintaining the quality of the property.

A suggestion was made by two commenters that tenants should be directly involved in the annual inspection and have input on the project's condition. In response to these comments, HUD has agreed to notify the tenant representative 30 days prior to the annual inspection, and in the absence of a tenant representative, HUD will require the owner to post a 30-day

notice of the annual inspection, inviting tenants and their representatives to participate in the inspection with Departmental personnel and to submit comments regarding the physical condition of the project. Two commenters also recommended that local city code enforcement officials should be contacted to obtain the history of enforcement actions against the project and to cooperate in the enforcement of housing standards. State and local officials carry out their own project inspections and the Department believes that it is not necessary to formally obtain their input. HUD encourages local housing code officials, tenants and the tenant representatives to submit any comments concerning the past history and current physical condition of the project.

Two commenters recommended that potential purchasers be given the results of HUD's annual inspection, particularly if deficiencies are found. The annual inspection is performed by the Department after approval of the plan of action and after rehabilitation has been completed. Prospective purchasers are allowed, pursuant to § 248.157(f), to inspect the property after filing an expression of interest. Another commenter proposed that tenants be given up to 30 days to comment on the results of HUD's annual inspection. The Department intends to fully enforce housing quality standards and tenants are encouraged to submit complaints of deficiencies at any time, but a 30-day comment period would serve only to delay the Department's orders to make repairs. The results of an annual physical inspection are available to tenants and other interested parties through the submission of a Freedom of Information Act request.

One commenter asked for clarification as to the sanctions available to HUD if an owner fails to comply with the terms of the use agreement or the Plan of Action. The sanctions listed in § 248.147 pertain only to violations of housing standards. In cases where the requirements of the plan of action are imposed through the execution of a regulatory agreement or amendment of the existing regulatory agreement, the sanctions available to HUD are those stated in the regulatory agreement, i.e., chiefly, requesting the insured mortgagee to declare a default and accelerate the debt, foreclosure (in the case of a HUD-held mortgage), taking possession of the project, or injunctive or other judicial relief or remedies. If the plan of action's requirements are implemented through a use agreement,

the primary method of enforcement would be judicial relief.

Section 248.149 (Timetable for Approval of a Plan of Action)

Six comments were received regarding the amount of time the Department has in which to approve a plan of action, once submitted. Two commenters suggested that the Department's deadline for approval be shortened to 90 days from 180. The 180-day period is derived from section 225 of the statute and is necessary to provide the Department with adequate processing time. This time frame allows 60 days for HUD to review the plan and notify the owner of any deficiencies, 60 days for the owner to respond, and another 60 days for HUD to review any revisions.

Another commenter requested that the processing clock be interrupted during any period where the owner has been asked to submit additional information or remedy deficiencies. The 180-day time limit applies only to the Department and is applicable in cases where the owner (and purchaser, in the case of a plan of action involving a transfer) have adequately addressed all issues related to the plan of action. If plan of action revisions are not received within that time frame, the statute does not require Departmental approval of the plan within this time frame.

The 180-day deadline does not apply to plans of action that are not approved because of deficiencies. One commenter suggests this should only be the case if there are material deficiencies. Section 225 of LIHPHA, from which this provision of the rule is derived, does not distinguish between material and nonmaterial deficiencies, and thus the interim rule likewise makes no such distinction.

The rule provides that if the Department does not act within the time constraints of this section, the owner will receive incentives and assistance in an amount that the owner would have received if the Department had complied with the time limitations. One commenter questioned whether the owner will be permitted to accrue interest on the amount it would have received if the plan of action was approved in a timely manner. The Department will pay the owner retroactively for incentives delayed due to HUD's failure to meet processing deadlines, but will not pay interest on any late payment of incentives.

Another commenter recommended that the rule be changed so that State or local governments receive all deficiency letters from the Department regarding plans of action. This change is not

necessary because any revisions submitted by the owner to the Department must also be submitted to the State or local agency. As part of the requirement that owners give plans of action to State or local agencies, owners are also responsible for keeping those agencies informed about any changes or revisions to those plans.

Section 248.153 (Incentives to Extend Low Income Use)

The Department received eleven comments concerning the provision of incentives to retain the affordability restrictions on eligible low income housing. A commenter recommended that paragraph (b)(1) of this section be amended to authorize release of all residual receipts as of the plan of action approval date. The commenter stated that the release of residual receipts should be automatic and should be in addition to the annual authorized return because residual receipts belong to the owner and the owner paid taxes on this money. The Department declines to make the release of residual receipts automatic since it does not have the authority to do so under LIHPHA. Section 219(a) of the statute only authorizes the Department to provide incentives necessary "to enable the owner to receive the annual authorized return for the housing determined under section 214(a), pay debt service on the federally-assisted mortgage covering the housing, pay debt service on any loan for rehabilitation of the housing, and meet project operating expenses and establish adequate reserves." Thus, the owner can access the residual receipts account only when it has unpaid distributions accruing prior to implementation of the plan of action, or to realize the 8% annual authorized return under the plan of action.

A commenter also suggested that the regulations should authorize release of land owned by the owner and currently included as security under the mortgage, if such land is not an integral part of the housing. The Department will consider allowing a partial release of security on a case-by-case basis as part of the plan of action in accordance with the administrative requirements applicable to FHA programs generally. Partial releases of security require mortgagee consent. Owners are advised to request the release at the time of their first notice of intent so that appraisers can be instructed to make separate value determinations. If a partial release of security is requested after this point, the owner would be required to obtain another appraisal and to pay for HUD's new appraisal and any third appraisal, if necessary.

A commenter recommended that sufficient section 8 assistance should be provided to cover all the units occupied by tenants with income at or below 80% of the area median income. The Department reaffirms that it intends to provide section 8 assistance to all current low and very-low income tenants. Additional assistance may also be reserved based on the tenant income profile required in § 248.135(e).

A commenter stated that the Department should accept rehabilitation, equity and acquisition financing from any source, public or private, without necessarily using section 241 mortgage insurance. The Department's position is that the plan of action may include an uninsured rehabilitation loan provided that the terms of the loan, including monitoring of rehabilitation, and default acceleration and foreclosure provisions are acceptable to the Department.

A commenter asked about the impact to the debt service on the section 236 mortgage if the interest reduction payment is redirected to the second mortgage. The Department has determined that redirection of the interest reduction payment ("IRP") will have no effect on the project's total debt service. Instead, the IRP will be redirected to service the debt on the second mortgage and the first loan will be fully serviced from project rental income. Two commenters also pointed out that a redirection of the section 236 interest reduction payment has no effect as an incentive. The Department agrees but will still allow the redirection to be requested as part of the plan of action since it is authorized by statute as an incentive. Mortgagee consent would also be required in this case.

A commenter asked how the owner is guaranteed the income reflected in the section 236 basic rents if the rents of moderate income residents are limited to the lower of 30% of the adjusted gross income or the section 8 existing FMR. The Department has determined that section 8 contract rents may go over 120% of the FMR as long as the gross potential income for the project does not exceed the Federal cost limit. Where necessary, section 8 rents in effect will subsidize market rents in order to ensure that the project remains affordable and that the owner has enough income to operate the project and receive an adequate return on preservation equity. If the rent stream in the future were to fall short of the amount needed to provide the owner with an 8 percent return, access to residual receipts could be provided or

the shortfall accrued for distribution in a future year.

Section 248.157 (Voluntary Sale for Projects Not Exceeding the Federal Cost Limit)

The Department received 397 comments concerning this section of the proposed rule. The majority of the comments focused on three major issues: The ranking of priority purchasers, the twelve-month priority purchaser marketing period, and the level and timing of the earnest money deposit.

The Department received 86 comments concerning the earnest money deposit which must be submitted by qualified purchasers as part of a bona fide offer to purchase eligible low income housing pursuant to this subpart. The issues raised by the commenters concerned the amount of the earnest money deposit, specifically whether it would be feasible for priority purchasers to raise the money; the timing of the deposit, along with the concern that the funds could be tied up for a year; and the waiver of the deposit by an owner or the Department. The proposed rule, in paragraph (g) of this section, requires that a bona fide offer include an earnest money deposit equal to one percent of the transfer preservation value of the project. While the statute does not expressly require such a deposit, the Department believes that an earnest money deposit is a reasonable means of ensuring that a purchaser is making a good faith offer. The purpose of the earnest money deposit is not to decrease an owner's risk or to ensure that a purchaser has the financial capacity to complete the transfer, as two commenters suggested, but to prevent sham offers which could result in an owner prepaying the mortgage or terminating the insurance contract in contravention of the purposes of this subpart. One commenter suggested that a more appropriate requirement for preventing sham offers would be to require HUD review of corporate documents, the history of the organization, and previous HUD participation information. The Department intends to review a purchaser's corporate documents when an expression of interest is submitted and will look at its previous participation information when approving a plan of action. However, the Department believes that an earnest money deposit is necessary at the time of submission of a bona fide offer in order to deter sham offers and to fulfill the requirements of LIHPHA. Therefore, the Department has retained the concept of an earnest money deposit

with the following modifications made in response to public comments.

Commenters suggested a range of alternatives to the amount of the earnest money deposit established in the proposed rule. All of the commenters who raised a concern as to the amount of the deposit, except for two, claimed that the proposed amount was excessive. Commenters protested that many priority purchasers would not be able to raise the predevelopment funds for the deposit, and that the deposit would limit the participation of many nonprofit organizations in the preservation program. In order to mitigate these effects, commenters suggested that the earnest money deposit be eliminated, or decreased to anywhere from \$100 per unit, to \$50,000 per project. Many commenters suggested a range for the deposit, such as the lesser of \$400 per unit or \$40,000 for the project.

The Department acknowledges that a large earnest money deposit may be prohibitive to many priority purchasers. In response to the reactions of the commenters, the Department has amended paragraph (g)(1)(ii) of this section to require an earnest money deposit equal to the lesser of one percent of the transfer preservation value of the project, \$50,000, or \$500 per unit. Resident councils intending to purchase a project pursuant to a resident homeownership plan under § 248.173 or § 248.175 must submit an earnest money deposit equal to \$200 per unit for 75% of the occupied units. The rationale for the lower amount of the deposit under a resident homeownership plan is that the purpose of the earnest money deposit is different. It is not to deter sham offers, but to ensure sufficient tenant support to make the homeownership plan successful. Paragraph (f) of the proposed rule, which lists the information the Department must provide to a purchaser who has submitted an expression of interest, has also been amended to include a worksheet which will indicate the level of the earnest money deposit required of the purchaser.

One commenter questioned what source could be used to raise the earnest money deposit. The statute and the proposed rule are both silent on this matter. The Department is not authorized to provide funds to a purchaser except in connection with an approved plan of action. The Department defers to the purchaser to choose the source of the deposit, whether from the purchaser's own funds, loans or grants. With regard to resident councils who intend to

purchase the project under a homeownership plan under § 248.173 or § 248.175, the earnest money could come from a pledge of the tenants' security deposits as long as this pledge would not violate any State or local laws and the owner has given its agreement to the pledge.

The earnest money deposit may not, in any transfer under this subpart, be provided by the owner, or by any entity affiliated with the owner. However, an owner may waive the requirement of an earnest money deposit or decrease the amount of the deposit. Paragraph (g)(2) has been amended to provide for this waiver or decrease. In order to waive or lower the deposit, an owner must state in its second notice of intent, submitted under § 248.133, that it intends to waive or accept a lower earnest money deposit, and that the waiver or decrease will apply to all qualified purchasers. If an owner fails to declare its intent to waive or decrease the deposit in the second notice of intent, the deposit may be waived or decreased during the time the project is held out for sale through written notice to the Secretary. The Secretary will then notify all purchasers which have submitted an expression of interest of the owner's decision to waive the deposit or accept a lower deposit. A waiver of or decrease in the earnest money deposit applies to all qualified purchasers who submit a bona fide offer for a particular project, except for resident councils who intend to purchase the project under a homeownership plan pursuant to § 248.173 or § 248.175. Resident councils will still be required to provide an earnest money deposit, despite an owner's waiver or decrease, because, in the case of resident homeownership, the purpose of the deposit is to ensure sufficient tenant support to make such an undertaking successful, not to avoid sham offers.

With regard to the timing of the deposit, comments ranged from suggesting that the deposit be tied to site control to requiring that the deposit be due 45 days after HUD approval of the bona fide offer. The Department concedes that there is a concern among purchasers that under the proposed rule the earnest money could be tied up for a year without acceptance of the offer, making it difficult for purchasers to obtain predevelopment funding and preventing purchasers from putting the money to use elsewhere. In response to public comments, the Department, while still requiring the earnest money deposit at the time a bona fide offer is submitted, has amended paragraph (h) of this section to require an owner to

accept or reject a bona fide offer, which has been made during the appropriate purchase period, within 30 days from the receipt of the offer. If the owner rejects an offer, the earnest money deposit must be returned to the purchaser; however, the offer will still be deemed a bona fide offer which an owner may later accept. If the owner accepts an offer at a later date, after first rejecting it and returning the earnest money deposit, the purchaser, if still interested in buying the project, must redeposit the earnest money within 30 days from receipt of the owner's acceptance of the offer.

Five commenters stated that while an earnest money deposit is held by an owner, it should be deposited in a HUD-supervised escrow account, earning interest to the benefit of the purchaser. The Department will defer to State and local law on this issue. The earnest money deposit must be held in accordance with the laws of the jurisdiction in which the project is located.

The Department received 89 comments concerning the ranking of priority purchasers under paragraph (h) of this section. Twenty-nine of these comments suggested abolishing any type of ranking among priority purchasers, while 60 comments expressed agreement with the concept, but suggested expanding the first priority beyond resident councils who intend to purchase the project pursuant to a homeownership plan under § 248.173 or § 248.175. Commenters claimed that expanding the ranking system would acknowledge tenant preferences for rental housing and would permit nonprofit organizations with experience in owning and operating low income housing more opportunity for purchasing projects under this subpart. Commenters wishing expansion of the ranking system suggested that first priority be given to any resident council, regardless of the type of ownership it seeks, to community-based nonprofit organizations, or at least those community-based nonprofits with tenant-endorsement, or to any priority purchaser with tenant endorsement.

The Department acknowledges that resident homeownership will account for only a small portion of all preservation plans of action for eligible low income housing. In most cases the projects will remain as low income housing and in this situation tenants may support a tenants association or a community-based nonprofit organization to own and manage the project. In order to accommodate these preferences and to provide community-based nonprofit organizations with the maximum

opportunity to purchase eligible low income housing, the Department has decided to expand the groups who are eligible to purchase a project during the first priority purchaser marketing period to include resident councils purchasing a project as rental housing and community-based nonprofit organizations with tenant endorsement.

In order for a community-based nonprofit organization or a resident council intending to purchase a project and maintain it as rental housing to be among the first of priority purchasers, the organization or council must demonstrate that it has the support of a majority of the tenants of the project. This support can be demonstrated by a resolution of the resident council or by a petition signed by tenants representing a majority of the occupied units. A resident council intending to purchase the project under a resident homeownership plan must demonstrate that it has the tenant support required under § 248.173(c). The proposed ranking system in paragraph (h) has been omitted from the regulation, paragraph (c) has been amended to change the priorities during the lock-out period, and paragraph (g) has been amended to require that evidence of tenant support be submitted as part of the bona fide offer, if the offer is made during the first priority purchaser marketing period.

The Department received 68 comments contesting the 12-month marketing period for resident councils under paragraph (h) of this section of the proposed rule. All of the commenters preferred a shorter marketing period; many advocated two, three or six month periods for priority purchasers, while others suggested permitting an owner to negotiate a sale at any time with any priority purchaser, giving tenants a right of first refusal, or allowing known priority purchasers to certify that they do not want to make an offer. The commenters expressed concern that owners may be reluctant to sell if they have to wait 12 months before accepting an offer and hence, may decide to retain the project instead. Also, there was a concern that purchasers may find it difficult to obtain funding and might be hesitant to invest time and resources in an offer which could be held for a year before acceptance or rejection. In recognition of these concerns, the Department has amended paragraph (c) to shorten the marketing period.

Beginning on the date of receipt of the second notice of intent, resident councils and community-based nonprofits, with the requisite tenant support, will have six months in which

to make a bona fide offer without competition from any other priority or qualified purchasers. During this six-month period, an owner may accept a bona fide offer from a resident council or community-based nonprofit organization with tenant endorsement, within 30 days of receiving the offer. Any acceptance by an owner is conditioned on HUD's approval that the offer meets the requirements of a bona fide offer. From the end of this six-month period, until 12 months after receipt of the second notice of intent, any priority purchaser may submit a bona fide offer, and an owner may accept an offer from any priority purchaser it chooses, conditioned on HUD's determination that the offer is bona fide. Once the 12-month period has expired, all qualified purchasers will have the opportunity to submit bona fide offers during the next three months.

Twenty comments were received regarding the language in paragraph (a) of the proposed rule which states that an owner is not obligated to accept a bona fide offer under this section, but may elect to retain the project and request incentives. The commenters expressed concern that permitting an owner to change its mind about selling the project after receipt and acceptance of a bona fide offer would result in the loss of time and resources by priority purchasers who go to the trouble of obtaining tenant endorsement and raising an earnest money deposit. Some commenters suggested that to deter owners from changing their minds, there should be a penalty, such as a five year period from the date of rejection of an offer which was previously accepted, in which an owner may not submit another notice of intent or prepay the mortgage or terminate the mortgage insurance contract.

The Department recognizes the concern raised by potential purchasers with regard to this issue. However, section 220 of LIHPHA imposes no obligation on an owner to accept a bona fide offer. LIHPHA creates two separate types of sales transactions; those under section 220 for sales of property within the Federal cost limit, where an owner "may" accept a bona fide offer from a qualified purchaser, and those under section 221, where the property exceeds the Federal cost limit, and an owner must accept the first bona fide offer it receives at a price that is not less than the transfer preservation value. The establishment of this dichotomy illustrates Congress' intent that the provisions of section 220 be voluntary, as opposed to the mandatory provisions of section 221. To impose an

obligation on an owner to accept a bona fide offer under this section would be contrary to standard real estate practice, where an owner may change its mind and take a property off the market, and in the absence of any indication to the contrary in the statute, the Department does not have the authority to create such an obligation. A purchaser whose bona fide offer has been accepted by an owner who later withdraws its acceptance may seek remedies under State and local law. Also, there are certain restrictions built into the statute and the regulation which should have the effect of deterring an owner from changing its mind once it has accepted a bona fide offer. For instance, if an owner changes its mind and fails to submit a plan of action within six months after receiving the information from the Department in § 248.131, the waiting period of § 248.135(h) applies, precluding the filing of another initial notice of intent for six months.

One commenter suggested, that in carrying out its responsibilities under paragraph (b) of this section, the Department solicit and maintain a list of priority purchasers who will be notified when purchasing opportunities are available. The Department intends to create such a list, including qualified, non-priority purchasers, in order to streamline its informational duties under this paragraph, and requests that any potential purchasers who wish to be part of this list contact the local HUD office with their request.

One commenter contested that the three-month qualified purchaser period in paragraph (c) of this section is inadequate since it would not give priority purchasers who are unsuccessful in the priority purchaser period sufficient time to seek a partner and restructure a deal. The three-month period in paragraph (c) is derived from the statutory language of section 220(c), and hence cannot be modified by the Department. Also, the Department sees no reason why a bona fide offer by a priority purchaser would not be accepted, unless an owner accepts another offer or changes its mind about selling the project in which case, extending the three-month period would not benefit the failed purchaser. If an offer is not accepted because it is not bona fide, a purchaser may resubmit an acceptable contract of sale and earnest money deposit.

Three commenters stated that in cases where an owner receives more than one bona fide offer from priority purchasers, the owner should be required to accept the offer from the priority purchaser

which has the highest ranking in paragraph (h) of the proposed rule, provided that the offer is at least 80% of the project's transfer preservation value. As previously noted, paragraph (h) has been amended to omit the ranking system contemplated in the proposed rule. If an owner receives more than one offer, it may choose which one it wishes to accept; the only requirement being that the offer is bona fide. Section 220 of the statute states that the purchase price of a project sold under that section may not exceed the preservation value of the project and paragraph (d) of this section repeats that language. The statute does not establish a minimum purchase price for the voluntary sale of a project under this section and, in the absence of any statutory direction, the Department has decided not to impose such a requirement.

The Department received two comments questioning whether community-based nonprofit organizations will be required to establish a separate nonprofit subsidiary to purchase a project under this section, as is required for projects constructed under section 202. Most eligible low income housing is covered by a regulatory agreement which requires an owner to be a single asset mortgagor. The Department, therefore, expects that separate subsidiaries will be established in order to meet this regulatory requirement. It is expected that State and local governments shall also establish separate mortgagor entities for the purpose of purchasing eligible low income housing. If a separate subsidiary is established or being established, the purchaser should notify HUD of this fact when submitting an expression of interest under paragraph (e) of this section.

One commenter requested that the State or local government be informed of all expressions of interest received by the Department, while another asked for notification at the time a bona fide offer is submitted. The State or local government will receive a copy of the second notice of intent submitted by the owner, and will be made aware at that time that the project is up for sale. A copy of the plan of action will also be submitted to the State or local government, which will then have a 60-day comment period. These requirements provide sufficient notice to these entities.

One commenter stated that in order to estimate the expenses involved in acquiring the project, the purchaser must have access to any expense analyses, operating income, and rehabilitation estimates for the project. This

information shall be provided to any purchasers under paragraph (f) of this section who have submitted an expression of interest.

Eleven comments were received by the Department concerning the fact that a bona fide offer, as set forth in paragraph (g) of this section, must contain a contract of sale as well as an earnest money deposit. The primary concern was that priority purchasers may not have the sophistication and experience necessary to draft an acceptable contract, and this could lead to rejection of their offer. The commenters suggested that HUD prepare draft contracts of sale to be used by purchasers under this subpart. The Department will provide some guidance as to required or prohibited language for the contract in its administrative guidance, but sees no need to prescribe an entire model contract.

Paragraph (g) of this section of the proposed rule has been amended to explicitly state that a bona fide offer must be for a purchase price which does not exceed the transfer preservation value of the project. This limitation applies to voluntary sales under this section, as well as to mandatory sales under § 248.161. It is equally applicable regardless of whether the transfer is financed solely through HUD assistance or through other sources.

Five commenters stated that an owner should have the sole responsibility of deciding whether an offer is bona fide, and HUD should not have to review each offer. The Department agrees that reviewing each offer is not necessary. Therefore, paragraph (i) has been amended to require HUD review only of the offer which is accepted by the owner, rather than of all of the offers which are submitted. Departmental review of the accepted offer is necessary to ensure compliance with the statutory requirement that a project can be sold only to a qualified purchaser which has made a bona fide offer. While HUD will not review all offers to ensure that they are bona fide, all offers which are received by an owner must still be submitted to the Department in case a review is required to ensure that an owner has not received any bona fide offers and thus, is entitled to prepay or terminate the insurance contract under § 248.169.

Another commenter stated that the contract of sale and earnest money deposit should be a minimum standard and that an owner should be entitled to conduct further investigation before determining that an offer is bona fide. Paragraph (h) has been amended to

require an owner to accept or reject a bona fide offer within 30 days of receipt. During that 30-day period an owner may conduct any investigation it desires prior to accepting or rejecting the offer.

Paragraph (I) of this section permits an owner to prepay or voluntarily terminate the insurance contract if a sales transaction, for which a bona fide offer was accepted and approved by HUD, is not consummated within 90 days of approval of the plan of action and if the failure to complete the transaction was for reasons not attributable in whole or in part to the owner. One commenter stated that the proposed rule should be clarified to show that prepayment would not be allowed if a bona fide offer is made and rejected; if the purchaser is unable to complete the sale for reasons within the owner's control; or if HUD fails to act in a timely fashion. Under section 220 of the statute, an owner is not required to accept a bona fide offer. If it rejects all of the offers it receives, an owner may not prepay, but must continue the affordability restrictions in place and may submit a plan of action for incentives, if it can meet the time requirements of § 248.135(a), or file a new notice of intent under § 248.105 to receive incentives. If an owner attempts to sell the project under the mandatory sale provisions of § 248.161, it must accept the first bona fide offer it receives, in accordance with the priority purchaser marketing period established in this section. If an owner rejects any offers under § 248.161, it will not be permitted to prepay or terminate under this paragraph. Paragraph (I) clearly encompasses the commenter's second concern; if a purchaser cannot consummate a sales transaction, for which a bona fide offer has been accepted and approved by HUD, and the owner is to blame, the owner will not be permitted to prepay or terminate. If the Department does not meet the time requirements for providing assistance under an approved plan of action, an owner is eligible to prepay or terminate, pursuant to § 248.169. Sanctions are not imposed if the Department misses any other time constraints.

Three commenters contested the additional 60-day lock-in period set forth in paragraph (I)(2) of this section, which requires an owner, if a transfer falls through after the conclusion of the 15-month sales period, to contact those qualified purchasers whose bona fide offers were not accepted, to invite them to renew their offers and purchase the project. The commenters claimed that the statute does not provide any authority for this extension of the sales

period. The Department acknowledges that there is no express authority in LIHPHA for this requirement; however, the primary intent of the statute is to preserve eligible low income housing and this one-time window would fulfill the statute's intent without unduly restricting an owner's rights. If an offer is made and accepted during the 60-day period, the owner would be in the same position as if the first transaction had been consummated. If an offer is not made or accepted, an owner will be eligible to prepay only two months after it would have in the absence of this requirement. The Department believes that the benefit of this 60-day period, the purpose of which is in part to ensure that an owner does not accept an offer it knows will fail in order to thwart the purpose of the statute, far outweighs any cost.

One commenter suggested that the proposed rule be amended to provide that an owner would not be required to wait longer than 12 months before receiving incentives or opening the sale period to qualified purchasers and that an owner would not be required to wait more than 15 months before gaining the unencumbered right to prepay. Pursuant to section 220 of the statute, as long as an owner has not accepted a bona fide offer from a priority purchaser, the sales period for qualified purchasers will begin automatically 12 months after submission of the second notice of intent. However, an owner will not be guaranteed the receipt of incentives within this 12-month period or eligibility to prepay within 15 months. Section 224 of LIHPHA, implemented in § 248.169 of the proposed rule, sets forth the period of time an owner must wait before being eligible to prepay due to the failure of HUD to provide the agreed upon incentives in a timely manner because of the failure of a sales transaction for which the owner was not to blame, or because no bona fide offers were received. These time constraints were established in the statute and the Department has no authority to override them.

Sixty-three comments were received by the Department concerning paragraph (m) of this section, which limits the Federal financial assistance provided to qualified purchasers to that needed to cover certain enumerated project costs. Two commenters stated that the assistance provided under this section should be the same for both priority and qualified purchasers. Three commenters stated that technical assistance funds should be available to all tenant groups, regardless of the form of ownership they choose. In addition to

the assistance and incentives given to all qualified purchasers, priority purchasers may be reimbursed, under paragraph (m)(6), for transaction expenses incurred in acquiring the project, and may receive a grant under paragraph (o) of this section. Also, pursuant to paragraph (m)(7), those resident councils who are purchasing a project in accordance with a resident homeownership plan under § 248.173 or § 248.175 may receive financial assistance to cover the costs of training for the tenants, the resident council and for homeownership counseling. The additional assistance for priority purchasers and resident councils under the homeownership program is specifically authorized in section 220(d) of LIHPHA. HUD cannot exceed its statutory authority by providing funding in excess of that designated in the statute for each type of purchaser.

Another commenter stated that the Federal assistance provided to a purchaser should be sufficient to cover the debt service on all of the federally-assisted mortgages on the project. This section of the rule has been amended accordingly.

Ten commenters were concerned that sufficient assistance be provided under paragraph (m)(4) to ensure that all project operating costs will be supported by the project's rental income. The commenters suggested that the organizational and overhead costs of ongoing ownership and operation, including management oversight, financial monitoring, inspections, budget preparation, and audit oversight should be expenses which will be paid out of project income. The Department will include as project operating expenses those reasonable expenses which are ordinarily covered in the program under which the project is insured.

One commenter stated that an owner should earn interest on reserve for replacement deposits. All reserve for replacement accounts may be invested and earn interest at the request of the owner to the mortgagee. Under Mortgagee Letter 83-24, mortgagees may not refuse such requests, provided the requested investment is eligible and the owner agrees to pay a reasonable fee to compensate the mortgagee for expenses.

The Department received 23 comments stating that priority purchasers should be entitled to a return on equity, pursuant to paragraph (m)(5). The definition of priority purchaser, in § 248.101, requires that the purchaser be a nonprofit organization. A nonprofit organization is not normally entitled to a return on its investment. However, the Department acknowledges that virtually

all priority purchasers will be dependent on Federal assistance in order to consummate a transfer under this section and will need an acquisition loan under section 241(f). An acquisition loan may only cover 95% of the transfer preservation equity of the project, plus, in the case of priority purchasers, expenses associated with the acquisition, loan closing and implementation of the plan of action, and the remaining 5% must come from the purchaser's own funds or other financing sources. The Department recognizes that priority purchasers may need to borrow the 5%. Therefore, the Department will build into the rent stream a return on any actual cash investment by the purchaser and debt service on any gap financing. The extra income must be allocated towards debt service payments on the non-federal loan, and if there is no non-federal loan, or if the return exceeds the debt service on the loan, then the surplus cash must be deposited in the residual receipts account for the project. For priority purchasers, HUD may also provide a grant to cover the 5% equity requirement.

Sixteen commenters asked for more clarification as to what transaction costs will be reimbursed to priority purchasers under paragraph (m)(6). The Department will provide a one-time grant to priority purchasers on a case-by-case basis in an amount not in excess of 5% of the project's transfer preservation equity. The purchaser should list those costs for which it is seeking reimbursement in the plan of action. At the time of plan of action approval, the Department will determine the amount of the grant. As noted in the preamble to the proposed rule, organizational costs incurred in establishing the nonprofit purchasing organization are reimbursable. Tenant training and education costs incurred by a priority purchaser which is not a resident council purchasing the project under a homeownership plan, may be reimbursed depending on the need for the training and the reasonableness of the costs. In response to one commenter's request, brokers fees are not a reimbursable expense. Seller financing will not be permitted to cover transaction costs.

Fifteen commenters stated that resident councils and other priority purchasers should be permitted to receive the assistance set forth in paragraphs (m)(6) and (7) to cover transaction, training, and counseling costs, on an up-front basis, rather than being reimbursed after the fact. These commenters asserted that resident

councils and other priority purchasers require seed money for predevelopment costs to assist in the preparation of a bona fide offer and the plan of action and for tenant education. The Department recognizes the need for financial backing early in the prepayment process. However, statutory constraints prohibit the Department from expending funds prior to approval of a plan of action. Section 220(d)(2), from which paragraph (m) of this section is derived, authorizes the Department to provide assistance only for approvable plans of action. The same constraint exists for mandatory sales under section 221(d)(1). Therefore, the Department is not able to provide any of the assistance authorized under paragraph (m) prior to approving a plan of action. The plan of action should include the transaction and training expenses which the resident council or other priority purchaser incurred or will incur with regard to the transfer of the project. HUD will reimburse the purchaser for those expenses covered under this section at the time of the transfer.

Two commenters suggested that HUD have a specific technical assistance pool for resident groups who require such assistance and a standard set of curricula for training which will be covered under paragraph (m)(7). Resident councils purchasing under a resident homeownership plan must include in their plan a description of the scope of any training they intend to undertake. The council must work with a nonprofit organization, approved by HUD, to develop the tenants' capacity for homeownership. These requirements are stringent enough to ensure that any training program is acceptable to the Department, while leaving resident councils with sufficient flexibility to tailor any training program to their particular needs. For these reasons, the Department believes that it is unnecessary for it to establish training criteria or to preapprove trainers.

The Department received 11 comments concerning paragraph (n) of this section, which requires that the amount of any residual receipts transferred to the selling owner be deducted from the sale price of the project. This language is derived from section 220(d)(3) of the statute. As noted in the preamble to the proposed rule, this provision poses a problem since residual receipts are not included in the sale price of the project, which is capped at the project's transfer preservation value. Therefore, deducting the amount of the residual receipts from the sale price will result in owners realizing less than the full amount of the project's

transfer preservation value. In the proposed rule, the Department specifically requested comments as to how this inconsistency should be dealt with. Two commenters expressed agreement with the statutory language; one commenter responded by suggesting that the purchaser buy the residual receipts from the owner; and eight commenters asserted that an owner should be permitted to receive the full transfer preservation value of the project and suggested that residual receipts be added to transfer preservation value in the appraisals and then deducted pursuant to this section. The Department has considered this problem and feels that adding residual receipts to preservation value would be inconsistent with customary appraisal standards, which section 213(c) of the statute instructs HUD to implement. Since the statute and its legislative history give no indication that this provision was a drafting error, the Department must assume that Congress intended that HUD deduct residual receipts from transfer preservation value. Therefore, the rule continues to track the language of the statute. Purchasers may buy the residual receipts from the owner as part of the sales transaction; however, the Department will not subsidize this purchase.

Three commenters raised concerns regarding paragraph (o) of this section, which authorizes grant assistance for priority purchasers. The assistance may not be in excess of the present value of the total projected fair market rent for the next ten years, or such longer period if necessary to cover the costs listed in paragraph (m). One commenter questioned whether the grant would be available concurrently with section 8 assistance. Another commenter asked whether the grant can be provided for more than ten years and if there is a limit on the amount of the grant. As the proposed rule indicates, a grant under this paragraph is a one-time grant. The reference to the ten year or longer period of time is to compare the grant to the present value of the fair market rents over time. The purpose of the grants is to provide HUD with more flexibility to work with priority purchasers to determine the most appropriate mix of subsidies, i.e., grants and incentives. Grant funds could, therefore, be made available in conjunction with section 8 assistance. There is no cap on the grant; however, the amount will depend on the costs listed in paragraph (m) and will be limited to what is necessary to cover those costs for each particular project. Another commenter stated that HUD

should develop guidelines for allocating these grants. As noted above, the purpose of providing assistance in the form of grants is to give HUD flexibility in financing specific projects. The Department will review plans of action to assure that the mix of proposed subsidies is appropriate and is the least costly alternative to the Federal government.

Three comments were received concerning paragraph (p) of this section, which states that the Department shall be entitled to seek reimbursement for any assistance provided under this subpart to a priority purchaser who becomes affiliated with, or sells the project to, a non-priority purchaser who would not otherwise be eligible for such assistance. One commenter claimed that the language of this paragraph should be amended to state that HUD "may under some circumstances" be reimbursed in order to permit a nonprofit to affiliate with a for-profit organization and not be penalized. This type of affiliation is exactly what this paragraph is intended to discourage. If a nonprofit and for-profit jointly own the project, the ownership entity would no longer meet the definition of a priority purchaser, and hence should not have access to the additional assistance available only to priority purchasers. Another commenter stated that if a priority purchaser sells the project to a qualified purchaser, HUD should modify the plan of action and only seek reimbursement of the grant on a prorated basis and reimbursement of the transaction expenses which have not already been used. The Department has decided not to prorate the grant. The grant is provided in one lump sum and the Department may seek reimbursement in the full amount. This paragraph requires reimbursement of assistance which is in excess of that to which a nonpriority purchaser is entitled. Since Federal reimbursement of transaction expenses is assistance which is only provided to priority purchasers, the entire amount of the assistance must be returned if the owner is no longer a priority purchaser. Another commenter suggested that this paragraph set a time limit on reimbursements to the Department. The Department believes that a time limit of ten years from the date of approval of the plan of action would be sufficient to serve the purpose of this provision, while providing HUD with adequate reimbursement. The rule has been amended to permit HUD to seek reimbursement for assistance if a priority purchaser affiliates with, or sells the project to, a for-profit organization

within ten years of approval of the plan of action.

Section 248.161 (Mandatory Sale for Housing Exceeding Federal Cost Limit)

In the proposed rule, the Department requested comments concerning how the Federal grants provided to qualified purchasers under paragraph (d) should be allocated if there are insufficient appropriations to fund all the requests. The Department received nineteen comments in response to this request. Many commenters suggested that in allocating insufficient grant money, priority be given to projects with the greatest amount of tenant involvement, the highest percentage of very low income tenants and those which will remain permanently affordable to low income tenants. Others recommended that preference be given according to when the projects are eligible to prepay, with those being eligible within twelve months given priority over those which are eligible within twenty-four months. Some commenters stated that there should be equal access to the grants and suggested that State and local governments be required to pay the shortfall that cannot be covered by Federal funds. Another commenter recommended that preferences be based on a demonstrated need for low income housing or on a showing that minority housing opportunities and racial integration would be adversely affected if the mortgage is prepaid. One commenter also recommended that first priority for grant assistance should be provided to projects located in areas with low income housing shortages.

Allocating grants according to the need for the housing may be unrealistic since it is expected that there is a need for each project being sold under the mandatory sale provisions of this section and that its prepayment may affect minorities; otherwise the owner most likely would be eligible to prepay the mortgage or terminate the insurance contract under § 248.141 and would not be selling the project under this section. Additionally, the Department does not have the authority to require a State or local government to provide grants to make up for the shortfall in Federal funds.

The statutory restrictions governing the manner in which plans of action are submitted and the time frames for their approval make the rest of these suggestions infeasible. LIHPHA establishes a specific time in which the Department must approve a plan of action and provide the agreed-upon funding. If the assistance is not provided within the statutory time frames, as set

forth in § 248.169, then an owner may prepay the mortgage or terminate the insurance contract and the project will be lost from the low income housing inventory. In order to implement the allocation processes suggested by the commenters, the Department would be required to withhold its approval of a plan of action until it received other plans and could then compare them to determine which have the most tenant involvement or the most very low income tenants. Since owners and purchasers will be submitting their plans of action at different times, withholding approval of the plans could result in more prepayments and terminations due to the delay caused by this process.

The alternative would be to provide grants to only a certain class of projects, such as those that are only twelve months away from prepayment; however, if there are few projects in this class in a particular year, funds which could have been provided to other projects would be withheld, resulting in needless losses to the low income housing inventory. The Department has decided to continue considering this matter in the event that it receives inadequate funding in the future.

In response to internal discussions, the Department has amended § 248.161 of the proposed rule to permit an owner, at its option, to accept an offer to purchase eligible low income housing at a sale price less than the transfer preservation value of the project. Sections 221 (b)(1) and (c) of LIHPHA require an owner, under the mandatory sale provisions, to accept a bona fide offer to purchase the housing for a sale price not less than the transfer preservation value. While the Department recognizes that an offer to purchase the housing at a price less than the transfer preservation value does not meet the definition of bona fide offer, there is no language in the legislation prohibiting an owner from accepting an offer other than a bona fide offer. Since LIHPHA does not prohibit an owner from voluntarily accepting an offer for a lower sale price, the Department has revised the rule to allow an owner to accept such an offer.

Permitting an owner to accept an offer at a lower sale price could avert unnecessary prepayments under section 224 of the statute in the event no bona fide offers are received. Additionally, a lower sale price would most likely require less Federal subsidy, in furtherance of section 221(a)(1) of LIHPHA, which requires that the Department employ the least costly alternative to the Federal government in achieving the purposes of the legislation.

Under the mandatory sale provisions of this section, if an owner receives an offer at a sale price less than the project's transfer preservation value, the offer may be accepted as long as it is submitted by a qualified purchaser within the appropriate sales periods set forth in § 248.157(c) and as long as the offer meets all of the requirements of a bona fide offer in § 248.157(g), except for the amount of the sale price.

Section 248.165 (Assistance for Displaced Tenants)

Fourteen comments were received by the Department regarding this section of the proposed rule. The most frequently made comment concerned relocation expenses. One commenter asserted that owners should not have to pay fifty percent of the relocation costs incurred by displaced tenants plus additional costs imposed by State or local laws. Two commenters expressed the view that owners should be required to pay more than fifty percent of the relocation expenses incurred by displaced tenants. Three commenters stated that if an owner pays fifty percent of the relocation expenses, HUD should pay the rest.

Section 223(b) of the statute states that the Secretary shall require the owner to "pay fifty percent of the moving expenses of each family relocated, except that such percentage shall be increased to the extent that State or local law of general applicability requires a higher payment by the owner." Therefore owners must pay at least fifty percent of the relocation costs of displaced tenants.

However, it would clearly be inconsistent with this statutory limit for the Department to impose a financial burden on owners in excess of fifty percent of the costs, in the absence of a State or local law directing a higher payment. As one commenter pointed out, those expenses which must be paid by the owner must be actual and reasonable relocation expenses, as defined in § 248.101 of this section. The Department will not require an owner to pay unreasonable relocation expenses or expenses which were not actually incurred by the tenants. Additionally, the statute does not impose any burden on HUD to pay relocation expenses. Those relocation expenses which are not paid by the owner must be borne by the tenants.

According to one commenter, tenants who voluntarily move in response to a notice of intent to prepay, and tenants who pay rents beyond the regulated levels after prepayment, should be included in the definition of displaced tenant and should be entitled to the

protections of this section. Section 223 of the statute applies only to tenants who are displaced as a result of prepayment of the mortgage or termination of the mortgage insurance under § 248.169 of this subpart. Tenants who voluntarily leave when a notice of intent is submitted are not leaving due to prepayment or termination, for at that point, an owner would not know that it could prepay under § 248.169, which only applies in extenuating circumstances. If an owner prepays or terminates under § 248.169, the Department no longer regulates rents except for special needs tenants who continue to reside in the project and for current tenants if the project is located in a low-vacancy area. If, in these cases, a tenant is paying more than the regulated rents, he or she should notify the Department and HUD will enforce the lower rent, but any such tenant would not be considered displaced for purposes of this section.

One commenter requested clarification as to the assistance to be provided by the Department in paragraph (a) of this section. This paragraph refers to the section 8 certificates and vouchers which will be provided by the Department to any low and very low, income tenants who are displaced as a result of a mortgage prepayment or insurance termination under § 248.169 of this subpart. This section 8 assistance will be provided pursuant to 24 CFR parts 882 and 887.

As one commenter noted, the Conference Report at page 467 indicates that HUD is authorized to set section 8 existing fair market rents at the "exception rent," i.e., 120% of the fair market rent, so that tenants who receive the assistance provided in paragraph (a) may use section 8 certificates or vouchers at the project even if the project's rents exceed the section 8 existing fair market rent. In order to implement this, the Department has amended § 882.106(a) and § 887.351(b) of this title, to permit approval of the exception rent on a case-by-case basis, as the Secretary deems appropriate. Paragraph (a) of this section has also been amended accordingly.

Special needs tenants, and, if the project is located in a low vacancy area, all current tenants, may accept the section 8 assistance provided in paragraph (a) in addition to the protections set forth in paragraphs (e) and (f), which permit special needs tenants and those who reside in a low vacancy area to continue to occupy their unit in the project or receive a replacement unit at the same rent levels, for three years after the date of approval of the plan of action. If these tenants

initially refuse the section 8 assistance provided in paragraph (a), they may apply for section 8 certificates or vouchers during or after the three-year protection period; as displaced tenants, they will be given priority for receiving section 8 assistance.

Paragraph (f) of this section provides that in order for the owner to fulfill its obligations with respect to a tenant by providing assistance enabling the tenant to occupy a replacement unit, rather than continued occupancy, the tenant must freely waive its right to continued occupancy in the project. A commenter suggested that for tenants who are 60 years or older, the rights which they would be waiving should be explained to them by an appropriate community services group. The Department concedes that special needs tenants may not be aware that they are entitled to continued occupancy in the project or a replacement unit. For this reason, the Department will notify special needs tenants, which includes tenants 62 years of age, or older, of their status and of the protections they can receive under this section at the same time they are notified of approval of the plan of action under § 248.169. The Department does not find that there is a justification for mandating that the owner arrange to have a community services group advise the tenants.

Two commenters suggested that the three year continued occupancy period should be applicable to all current tenants who are displaced. However, section 223(c) of the statute expressly states that the continued occupancy and replacement unit provisions "shall only apply" to special needs tenants or tenants residing in a low vacancy area. In the face of this clear statutory limitation, the Department cannot extend these protections to cover all displaced tenants. However, as previously noted, any displaced low income tenant may receive section 8 certificates or vouchers. Also, as one commenter pointed out, under paragraph (d) of section 223 of the statute and paragraph (i) of the proposed regulation, an owner cannot refuse to rent to tenants because they receive section 8 assistance.

The Department received a suggestion from one commenter that upon being notified that tenants will be displaced, HUD should request vacancy information from the local public housing agency in order to locate suitable housing for elderly and disabled tenants. Paragraph (c) of the proposed rule already requires the Department to consult with public housing agencies to ensure that any very low and low

income families which are displaced are able to find suitable replacement housing. Therefore, the proposed regulation need not be amended to accommodate this comment.

Section 248.169 (Permissible Prepayment, Voluntary Termination or Modification of Commitments)

The Department received one comment stating that an owner should not be permitted to prepay its mortgage or terminate the mortgage insurance contract under any condition if it would mean that low income tenants are displaced and if the prepayment or termination would result in a loss of affordable housing. Section 224 of the statute, however, authorizes prepayments and/or terminations if the Department approves a plan of action and then fails to provide the agreed upon incentives within a specified time period; if an owner offers the project for sale in accordance with the voluntary or mandatory sale provisions and no bona fide offers are received; or if an owner accepts a bona fide offer, but the sales transaction fails through no fault of the owner. Also, an owner may be permitted to prepay under this section at a later date if HUD is unable to renew a section 8 housing assistance payments contract due to the lack of funding and cannot modify the commitments or revise the incentive package to compensate the owner for the lack of section 8 assistance.

Another commenter suggested that in order to minimize prepayments and terminations under this section, if a resident council makes a bona fide offer to purchase the project and the offer is dependent upon Federal funding which is not forthcoming, the residents should have time to seek alternative financing before an owner is permitted to terminate the affordability restrictions. Section 224(a) of the statute states that an owner may prepay or terminate if any of the enumerated circumstances occur. The statute does not provide any extra time period in order to secure other assistance. The Department interprets this to mean that an owner has the option to prepay or terminate as soon as the Department fails to meet the time periods for the provision of assistance set forth in paragraph (a)(1) of the statute, or as soon as the fifteen-month purchase period ends and the owner fails to receive a bona fide offer. The Department acknowledges that an owner is not required to exercise its option to prepay or terminate, and if an owner, or owner and purchaser, decide to extend the time in which HUD can provide assistance, the Department will recognize this extension and make every

effort to provide the agreed upon incentives. Likewise, if an owner wishes to hold the project for sale past the purchase period, the Department will recognize a plan of action submitted by the owner and a qualified purchaser, subject to the restriction in § 248.111, which prohibits HUD from approving a plan of action with an appraisal which is more than thirty months old.

A commenter expressed concern that it is likely that many owners with projects in rural areas or small municipalities will be entitled to prepay the mortgage or terminate the insurance contract under this section. The commenter suggested that, in order to minimize this possibility, the preservation program should be flexible and encourage broad participation of potential purchasers. The Department recognizes the commenter's concern, and intends to minimize this outcome by notifying as many potential purchasers as possible about the project under § 248.157(b) and by providing incentive packages which are attractive to qualified purchasers and will enable them to meet the costs of owning and operating the project.

Paragraph (a)(4)(i) permits an owner to prepay the mortgage or terminate the insurance contract if the owner receives and accepts a bona fide offer, but the sales contract falls through for reasons not attributable in whole or in part to the owner. One commenter stated that title defects or covenants on the property which run with the land and housing violations which can be cured by making repairs should not be considered attributable to the owner. The Department disagrees, with one exception. Covenants that run with the land, such as utility easements, should not affect an owner's title to the property to the extent that it would preclude completing a sales transfer, but if they do, and the owner has acted diligently to have the covenants or easements removed and has failed to do so, the owner would not be penalized and could take action under this section. However, if there are defects in an owner's title to the property, such as mechanics liens or liens resulting from unpaid taxes, it is the owner's responsibility to clear up these defects and if it fails to do so and the sale falls through as a result, the owner will not be entitled to prepay or terminate the mortgage contract. Likewise, if the project has been cited for housing code violations, it is the owner's responsibility to bring the project up to code. A housing code violation is not the same as not meeting the housing standards. If a project does not meet

housing standards, the owner may still transfer the project and the Department will make a rehabilitation loan available to a qualified purchaser, but the purchaser must agree to maintain the project in accordance with the housing standards upon completion of the rehabilitation.

One commenter requested clarification as to what happens if the Department is unable to provide the section 8 assistance required under an approved plan of action. If section 8 assistance is not available to a project for which a plan of action has been approved and, as a result, the Department fails to meet the deadline for providing assistance under paragraph (a), the owner has the option of prepaying the mortgage or terminating the mortgage insurance contract. If section 8 assistance is unavailable at the time of renewal of the housing assistance payments contract, the provisions of paragraph (b) of this section are applicable.

Pursuant to paragraph (b), if HUD is unable to extend the term of the section 8 assistance, it may attempt to revise the package of incentives provided to the owner under the plan of action and provide benefits which are comparable to those the owner had been receiving. If HUD is unable to create a comparable incentive package, the owner may request that the commitments it made pursuant to § 248.145(a) (2) through (10) be modified or that the plan of action be terminated, which would result in termination of the affordability restrictions on the project. If the owner intends to request a modification of commitments or termination of the plan of action, it must first send a notice to HUD stating this intention. The Department then has ninety days from the date of receipt of this notice to extend the section 8 assistance or comparable incentives and to continue the binding commitments on the project. If the Department is unable to do either of the foregoing within the ninety-day period, HUD may modify the commitments, and if this fails, permit termination of the plan of action. If an owner does not request a modification of commitments or termination of the plan of action, the Department is not bound to the ninety-day period.

Section 248.173 (Resident Homeownership Program)

The Department received comments from 46 individuals and groups on this section. The most significant issue expressed by commenters was their concern that the Department had not given sufficient priority to forms of

homeownership that involved continuing restrictions to assure that units remained affordable to low income families. This concern was raised in several different contexts.

Most directly, 12 comments stated that too much emphasis was placed on resident homeownership programs where there was no requirement for permanent affordability restrictions and no additional limitations on resale profits beyond the 20 year phase-out required by statute and described in paragraphs (i)-(k). Thirteen comments advocated the inclusion of a requirement that all resident homeownership programs be subject to the continuing affordability restrictions for the remaining useful life of the project under § 248.145. Four comments recommended or asked whether a resident council could impose more stringent resale restrictions than those included in paragraphs (i)-(k).

An additional 15 comments specifically recommended that limited equity cooperatives with continuing income affordability restrictions be considered an eligible form of homeownership. These comments were received despite the fact that proposed paragraph (f) explicitly includes such entities as an eligible form of homeownership.

Similarly, 20 comments requested that the Department allow limited equity cooperatives to assume the existing federally-assisted mortgage. By statute, the assumption of such a mortgage would also require the limited equity cooperative to comply with the continuing low-income affordability restrictions under § 248.145.

Lastly, in regard to funding resident homeownership programs, 10 commenters recommended that limited equity cooperatives be eligible to receive continuing project-based section 8 assistance to assure that the housing remains affordable to low-income purchasers. This assistance would be in place of, or as a supplement to, the grants provided for resident homeownership programs. Five of these commenters pointed out that section 220(d)(3)(A) of the statute expressly authorizes the provision of incentives (including section 8) under section 219(b) to all qualified purchasers, which includes resident councils proposing homeownership programs. This set of comments went on to note that the Conference Report at page 465 indicates that HUD should work with priority purchasers to determine the most appropriate mix of subsidies, i.e., grants and incentives.

The Department attributes the number of comments raising these concerns to

the structure of § 248.173, which attempted to cover various types of homeownership programs, and which did not highlight the fact that this section includes limited equity cooperatives as an eligible form of homeownership.

The lack of requirements to retain affordability restrictions beyond the initial purchaser and the phaseout of restrictions on resale profits are designed to provide current low-income tenants and other initial low-income purchasers with an opportunity to become homeowners in the fullest sense of the term. This goal includes the ability over time to fully benefit, like any other homeowner, from making a profit at resale. However, the Department has long recognized that homeownership can take a variety of forms. This is implicitly recognized in paragraph (d)(xii) of this section, which requires that resident councils include with their homeownership plan any restrictions on resales beyond those imposed by the statute.

In order to fully respond to this overall concern, the Department has decided to add a new § 248.175, entitled "Resident homeownership program—limited equity cooperatives." Resident councils seeking to convert the ownership form of their project to a limited equity cooperative would be subject to the requirements of this new section.

These limited equity cooperatives would be operated very much like those currently assisted by the Department under the section 236 and section 221(d)(3) BMIR programs. These entities would be eligible to assume the existing federally-assisted mortgage and, therefore, be subject to the continuing low-income affordability restrictions under § 248.145. With respect to restrictions on resale profits, sellers would be subject to the limitations described in the preamble discussion of § 248.175.

With respect to providing section 8 assistance and, as appropriate, other incentives, the Department agrees that such assistance is authorized and can be used for resident homeownership plans submitted under § 248.175. Limited equity cooperatives receiving incentives will be subject to the continuing low-income affordability restrictions under § 248.145.

Since grants will not be the sole source of HUD funding under § 248.175, the Department anticipates that the amount of grant funding will be less than for a similar project submitted under § 248.173. This expectation is based on the "due diligence" that the Department must provide to assure that

the funding will result in a homeownership program that is both financially feasible and is the least costly alternative that is consistent with establishing a viable homeownership program.

The Department received a number of comments on more specific aspects of resident homeownership programs. Six comments were received on paragraph (a) of this section. Two commenters recommended that tenant-controlled nonprofits, in addition to resident councils, be eligible to develop and implement a resident homeownership plan. By statute, tenants seeking to purchase a project to develop a resident homeownership plan must form a resident council, which is a tenant-controlled nonprofit. A tenant-controlled nonprofit that is not a resident council may, however, be a priority purchaser eligible to acquire a project and receive assistance to maintain it as affordable rental housing under § 248.157 or § 248.161.

Three commenters endorsed the use of public-spirited for-profit organizations to assist resident councils and tenants to consider their options and develop the capacity necessary to own and manage a project. The statute requires resident councils to work exclusively with public or private nonprofit organizations for these purposes. However, such nonprofit organizations may subcontract with for-profit entities.

The last comment on this paragraph stated that a resident council should be required to be incorporated under State law. The statute and the proposed rule require a resident council to be both incorporated and to be a nonprofit, and require a nonprofit to be organized or chartered under State or local law. To make this linkage more directly, the rule will change the definition of "nonprofit organization" in § 248.101 to say that it must be incorporated under State or local law.

Seven comments were submitted in reference to requirements for "bona fide offers" for resident councils under both paragraph (c) of this section and § 248.157(g). Three commenters, two local community service agencies and a national housing trade association, stated that a resident council should be required to demonstrate that a simple majority of the tenants should have expressed an interest in participating in a resident homeownership program. Two other commenters, a law firm and a national tenant's organization, felt that a simple majority was too onerous and recommended that the Department establish procedural standards to ensure legitimate tenant representation rather

than using an arbitrary percentage of residents.

The remaining two comments were directed at the amount of the earnest money deposit required to be made as part of a resident council's bona fide offer. These comments are in addition to those discussed under § 248.157(g). Both commenters felt that one percent of the transfer preservation value was too high an amount and one comment went on to suggest that \$200 for each interested tenant was an appropriate amount. The latter commenter also urged that security deposits pledged by tenants interested in becoming homeowners be counted as part of the earnest money deposit.

The proposed rule required that the resident council demonstrate that at least 75 percent of all families, representing at least 50 percent of all the units, express an interest in participating in a homeownership program at the time an offer is made. The Department strongly believes that a substantial interest, as described in the proposed rule, has to be shown by the tenants to realize a viable homeownership program. This is particularly important given the time frames involved in having the resident council prepare and submit a detailed homeownership plan to HUD for approval and acquire ownership of the project upon HUD's approval of the plan. If the resident council is unable to meet these time frames, the owner may be able to prepay the mortgage and convert the project to a market-rate rental property or to other uses.

The Department, therefore, will maintain the current requirement in terms of the percentage of tenants needed to express an interest in participating in a homeownership program. In light of the comments on earnest money deposits above and the changes made in regard to comments received in response to § 248.157(g), the Department will make the following adjustment with respect to bona fide offers submitted by resident councils pursuing a homeownership plan under this section or § 248.175. Resident councils will be required to submit as an earnest money deposit \$200 from each interested tenant (i.e., \$200 x the number of units that constitute 75 percent of the occupied units). This requirement cannot be waived or reduced by the current owner under § 248.157(g). However, the tenants will be allowed to pledge their security deposits if the owner agrees and such a pledge is permitted under applicable State and local law. The Department feels that this change is responsive to legitimate

concerns about the amount of the earnest money deposit and that this expression of support from a very substantial portion of the tenants is a good indicator of the likelihood of realizing a viable homeownership program.

Seven comments were received on requirements for submitting a homeownership plan under paragraph (d) of this section in relation to activities and costs eligible for funding under paragraph (e) of this section. One comment recommended that repairs as well as rehabilitation activities be included as an eligible item. Paragraph (d)(iii) already requires a resident council to indicate as part of its description of rehabilitation activities what major types of repairs will be undertaken. A second commenter urged that a reserve for unforeseen replacements for a period of at least five years be included in the homeownership plan submitted to HUD. The proposed rule requires that the project be brought up to the housing standards set forth in § 248.147 and provides funding for an adequate reserve for replacements (both an initial contribution as well as monthly contribution from occupancy charges). The Department, therefore, does not feel that a special reserve for "unforeseen replacements" is needed. However, the Department will carefully review homeownership plans to assure that replacement needs are fully addressed through the proposed rehabilitation activities and reserve for replacements account.

The remaining five comments asked what types of activities and costs are allowable for technical assistance, training, and counseling. One commenter suggested that continuing homeownership training provided by staff or on a contractual basis be included, another stressed the need for legal and organizational assistance, and two other commenters simply asked for more clarification. The fifth commenter stated that funding should be at a sufficient level to enable resident councils to seek services at prevailing rates rather than requiring the use of the lowest cost services in a local area. The need for assistance will vary considerably from project to project and, therefore, the Department feels that the language in the rule should remain unchanged and inclusive. This will permit HUD to fund a wide range of activities if they are justified in the homeownership plan and come within the overall cost limits established in § 248.157(m)(7). With respect to allowable cost rates, there is no requirement that the costs be the lowest

in the area. The Department will review the proposed costs to determine if they are reasonable.

In addition to the comments discussed above regarding limited equity cooperatives, the Department received 6 comments on eligible forms of homeownership under paragraph (f) of this section. Four comments urged that mutual housing associations be included as a separate and distinct form of homeownership. One commenter provided the following definition for a mutual housing association:

A private, section 501(c)(3) non-profit organization organized under state law, which owns, manages and continuously develops affordable housing by providing resident involvement in the provision of such housing, long-term housing for low and moderate income families in which residents participate in the ongoing management of such housing, through membership in the association, and have the right to continue residing in such housing as long as they remain members of the association.

This definition indicates that members of a mutual housing association do not have any ownership or equity interest in their units and, therefore, such an ownership form would not be approvable. The proposed rule follows the statutory language in allowing a broad range of ownership forms including cooperatives, limited equity cooperatives, condominiums and fee simple ownership as long as ownership interests or shares are transferred to individual purchasers. Insofar as ownership or equity interests are to be held by the individual purchasers and a mutual housing association meets the other requirements of the rule then such an ownership form could be approved. The Department believes that this determination is best made on an administrative, case-by-case basis rather than through a change in the rule. It should also be noted that a mutual housing association may qualify as a priority purchaser eligible to acquire a project and receive assistance to maintain it as affordable rental housing under § 248.157 or § 248.161.

The two remaining comments on this subsection recommended that condominium arrangements not be allowed as an eligible form of homeownership. Both of these commenters are tenant organizations and they described their own adverse experience in getting condominium associations to enforce use agreements and other restrictions vis-a-vis individual association homeowners. The Department recognizes that a condominium association may have more difficulty enforcing use agreements

than a cooperative corporation. Nevertheless, the statute specifically authorizes condominium ownership and HUD feels that a broad range of ownership forms should be allowed. In approving homeownership plans, the Department will review the resident council's capacity to own and manage a project, including its ability to meet the various ongoing compliance requirements specified in this section.

Three comments took issue with the requirement in paragraph (g) of this section; that the initial owners must occupy their units for at least the initial 15 years of ownership. The comments felt that this requirement was too long and would discourage tenant interest in purchasing, and did not accommodate changes in employment or emergencies. This requirement was included in the proposed rule for two reasons. The first reason was to assure that the units remained owner occupied rather than having the units revert to a primarily rental status, although with no continuing affordability restrictions and potentially with significantly higher rents. The second reason was to keep homeowners from effectively evading the minimum 20 year phase-out on limitations on resale profits by renting out their units at rents considerably higher than their occupancy charges. The Department feels that these reasons continue to be legitimate. With respect to accommodating employment changes or an emergency situation, this subsection explicitly allows resident councils to make such determinations and allow owners to rent out their units.

The Department is removing the owner-occupancy requirement for homeownership plans submitted under the new § 248.175. This occupancy requirement is not needed for a limited equity cooperative with continuing affordability restrictions and limitations on resale profits. Furthermore, most of the limited equity cooperatives will assume the existing federally-assisted mortgage or receive section 8 assistance. As a result, they will be subject to other HUD program regulations restricting the ability of the initial owners to rent out their units.

Three commenters objected to the recapture requirements in paragraphs (h) and (i). One commenter stated that returning 50 percent of any net sales proceeds from the sale of the units to HUD is unnecessary and that these proceeds should have been reflected in funding for the resident council's homeownership plan. This requirement is statutory and is directed at the situation where there may be unexpected proceeds from the initial

sale of the units. Two commenters stated that the requirement that any net proceeds from resale not retained by the homeowner at resale be paid into a local HOME Investment Trust Fund was wrong in principle and should be restructured. This requirement is also statutory. The Department, therefore, has not made any changes to these recapture provisions.

Two comments were received on paragraph (o) concerning qualified management. The first commenter stated that resident councils should be required to use professional management to operate the project after conversion. This subsection, in fact, already establishes this requirement. Resident councils will either have to demonstrate their management experience and ability or enter into a contract with a qualified management firm approved by HUD.

The second comment urged that HUD establish a process to regain control of a unit if the individual unit owner leaves or if the unit becomes uninhabitable. The Department expects that the resident council will have primary responsibility for dealing with the types of situations described by the commenter. In approving homeownership plans, the Department will pay very close attention to the resident council's capacity to own and manage a project. Limited equity cooperatives approved under § 248.175 are also likely to be subject to other HUD program regulations covering vacated or uninhabitable units. This will occur because most limited equity cooperatives will assume the existing federally-assisted mortgage.

Five comments were submitted on the timely homeownership provisions of paragraph (o) of this section. One commenter stated that since the transfer of ownership has to be approved as part of the homeownership plan, resident councils should be required to acquire ownership of the project immediately rather than within six months after approval, as included in the proposed rule. Three other commenters felt that six months was too short a period and suggested that this period be extended for good cause or be at least one year.

The proposed rule, in fact, contained an inconsistency with respect to this issue. Section 248.135(1) of the proposed rule required qualified purchasers, a term that includes resident councils, to close transactions within 90 days of HUD's approval. Paragraph (o) has been changed to conform to this overall requirement. The Department believes that all qualified purchasers, as well as sellers, are likely to need a reasonable

period of time to actually close on a sales transaction after the date of HUD's approval. It is only after HUD's approval of a plan that both the buyer and the seller may be able to complete such closing requirements, among others, as finalizing financing arrangements (e.g. the precise amount of principal) or obtaining the consent of the partners to the terms approved by HUD. The Department believes that 90 days is fair to both the buyer and the seller.

The Department is sensitive to the concerns that resident councils will not have sufficient time to complete a transaction. This concern applies to all purchasers, but may have particular relevance for resident councils and community-based nonprofits. The process of transferring a property set forth in the statute for either continued rental use or for resident homeownership under the best circumstances is a very long procedure and the Department is hesitant to further lengthen the time periods. As noted in the discussion of § 248.135(b), the Department has, in part, addressed this issue by extending the period for submitting plans of action after the owner has accepted an offer from 90 days in the proposed rule to six months. This additional time should enable purchasers to develop better plans of action that most often lead to closing transactions within 90 days of HUD's approval. The rule also does not preclude a buyer and seller from agreeing to extend this period as long as the owner waives its right to prepay during this extension.

Finally, one commenter felt that the resident council should be required to transfer ownership of the units to individual purchasers within one year of its acquisition of the project rather than the four year period provided for in the proposed rule. The Department agrees with the basic thrust of this comment, i.e., ownership interests should be transferred to individual purchasers as quickly as possible. The four year period was intended to account for a variety of contingencies that might reasonably delay this transfer, such as making sales contingent on the completion of rehabilitation activities. The Department believes that this intent remains valid and has not shortened the maximum transfer period to individual purchasers.

Section 248.175 (Resident Homeownership Program—Limited Equity Cooperative)

As discussed above with respect to § 248.173, the Department has included in the interim rule a new provision setting forth the requirements applicable

to the purchase and operation of an eligible low income housing project by a limited equity cooperative. The limited equity cooperative model includes the procedures and requirements otherwise applicable to the purchase and operation of projects with continued low income affordability restrictions. Although certain provisions of § 248.173 which ensure the feasibility of the resident homeownership program and do not conflict with such procedures and requirements or with the nature of a limited equity cooperative have been incorporated by reference into § 248.175, the Department does not view § 248.175 as being based solely on the statutory authority of section 226; instead, it is a variation of the "transfer" plan of action authorized under LIHPHA generally.

Paragraph (b) lists those paragraphs of § 248.173 which are incorporated by reference into § 248.175. Paragraph (d)(i) of § 248.173 states that the homeownership program shall include a statement of the amount of grant funds requested. Under § 248.175 the limited equity cooperative will be eligible for both grants and for any incentives otherwise available to nonprofit purchasers. The "type of homeownership contemplated," for purposes of § 248.173(d)(ix), would be a limited equity cooperative, and the "restrictions on resale" referred to in § 248.173(d)(xii) would be those restrictions on resale required by HUD in FHA multifamily programs for limited equity cooperatives. HUD's Model Form of By-Laws, Form No. 3245, for limited equity cooperatives, imposes restrictions on the amount of equity which a cooperative shareholder may realize; those restrictions provide that memberships may be sold at no more than the "transfer value," which generally equals the sum of the down payment paid by the first occupant, the value of improvements installed by the selling member, the amount of principal amortized by the selling member and previous members, and, with HUD's approval, an amount corresponding to an increase in the cost of living.

Section 248.173(f) is not cross-referenced in paragraph (b), since the Department has determined that a limited equity cooperative is an acceptable form of homeownership. Of course, the specific features of the resident homeownership program must nevertheless be approved by HUD in accordance with § 248.175. Paragraphs (g)(2) and (g)(4) have also not been incorporated by reference. The former establishes a standard for affordability which is inapplicable to limited equity cooperatives; instead, the affordability

requirements under § 248.145 shall be applicable. Likewise, paragraph (g)(4) would not be applicable, since such restrictions are not needed for projects where availability and affordability restrictions will continue for the full term of the plan of action and HUD program regulations restrict the ability of tenants to rent out their units.

Section 248.175 also does not cross-reference paragraphs (i) (1) and (3), (j), (k) and (l) of § 248.175. These provisions require the execution of a promissory note payable to HUD, establish formulas for the amount of equity which a cooperative shareholder may retain from sales proceeds and provide for the use of recaptured funds. These provisions would overlap with and conflict with the provisions applicable under HUD's program requirements for section 236 and section 221(d)(3) limited equity cooperatives. Paragraphs (p), (q) and (r) have not been cross-referenced, because housing standards, audit and reporting requirements in those paragraphs would likewise overlap HUD's analogous program requirements for limited equity cooperatives and requirements under the plan of action. Paragraph (s) is not cross-referenced because the limited equity cooperative would have continued low income affordability restrictions that are consistent with those applicable under the section 236 or section 221(d)(3) mortgage and its regulatory agreement, as modified pursuant to subpart B.

Paragraph (c) provides that the purchase and operation of eligible low income housing by a limited equity cooperative under this section shall be carried out in accordance with all provisions of subpart B that are otherwise applicable to the transfer and operation of a project with continued low income affordability restrictions, except as otherwise provided in § 248.175. Thus, for example, the total charges for housing costs (i.e., principal and interest, taxes, insurance, occupancy charges and utilities) for current tenants that become cooperative share holders may not exceed 30% of the adjusted income of the tenant, or the fair market rent, whichever is lower, in accordance with § 248.145(a)(5).

Section 248.177 (Delegated Responsibility to State Agencies)

The Department received six comments regarding this section, two from State housing agencies, two from trade organizations or lobbyists, and one from a consultant and one from an advocacy organization. Two commenters suggested that HUD expand on the regulation by publishing the implementing instructions normally

reserved for administrative guidance. As stated in the preamble to the proposed rule, the Department will publish its application and approval procedures in its administrative guidance. The rule has not been changed to reflect these comments. Two comments stated that the Department should employ State agencies as "processors" without regard to State preservation plans approved under this section. The Department will contract for technical assistance with State agencies as the need arises. Such contracting will be done through established contracting and bidding procedures, such as those used for HUD's multifamily program, Delegated Processing, which do not necessitate a change to the proposed rule.

Two comments were received regarding the ability of State agencies to charge fees for processing notices of intent and plans of action as part of an approved State preservation plan under this subpart; one commenter was in favor of such fees and one opposed. The Department does not believe that State agencies should charge owners of eligible low income housing fees for processing notices of intent or plans of action where the owner, absent an approved State preservation plan, would be able to file such notices of intent or plans of action with Department at no charge. Accordingly, paragraph (d) has been added to the rule, prohibiting a State agency from charging owners fees for processing any notice of intent or plan of action or taking other action under an approved State preservation plan.

Three commenters suggested that the Department entertain proposals for various levels of delegated authority under this section. The proposed rule stated that the Department would "delegate some or all responsibility" to a State agency as part of a delegation plan approved under this section. The administrative instructions will allow State agencies to specify those activities for which they desire delegated responsibility. The rule has not been changed to reflect these comments.

One commenter suggested that the Department use Standard and Poor's "top tier" bond rating certification as satisfaction of the "independent analysis" requirement. The Department will adopt this standard as well as others in its administrative instructions.

Three comments were received regarding the lack of regulations implementing a portion of section 602(a) of the statute, amending section 241(f)(1) of the National Housing Act, regarding risk sharing arrangements with State agencies for the insurance of section

241(f) equity and acquisition loans. The three commenters all proposed some modified form of State agency coinsurance. The proposals conform with the Department's interpretation of the statutory language. State agency coinsurance, the Department's only coinsurance program that has not been formally terminated, is administratively inactive at this time. If the Department decides to implement section 602(a) as a form of coinsurance for section 241(f) loans, it will do so through separate rulemaking.

Section 248.179 (Consultation With Other Interested Parties)

The Department received two comments on this section expressing the importance of communication between HUD and State and local governments and suggesting that HUD identify contact persons from these entities, permit the submission of comments on notices of intent and plans of action, and give State and local governments the opportunity to provide economic data and other information relevant to the preservation process. One commenter suggested that this section of the proposed regulation be expanded to identify specific responsibilities that State and local governments should be expected to undertake.

The Department intends to implement fully this section of the regulation and is currently meeting with State and local governments to formulate criteria for consultation and to identify specific contact persons in State and local governments where eligible low income housing is located. The Department has also expanded the role of State and local governments in the preservation program by providing them with a sixty-day comment period on plans of action submitted for projects within their jurisdiction, as set forth in § 248.135. While the State or local government will also receive copies of notices of intent submitted in their jurisdiction, no comment period has been established for notices of intent since the Department sees no need for comments at that stage in the process. State and local governments are encouraged to submit comments or any relevant data they may possess to the Department at any time during the preservation process. The Department declines, however, to impose any responsibility on State and local governments under this section. The Department assumes that these entities are familiar with the preservation program and will act accordingly.

Section 248.181 (Notice to Tenants)

Nineteen comments were received by the Department concerning the notification of tenants affected by owners' actions under this subpart. The comments suggested that tenants be notified at every stage in the preservation process and that they receive copies of all correspondence between owners and the Department.

Under the provisions of this rule, tenants residing in projects subject to this subpart will receive copies of the first and second notices of intent, under §§ 248.105 and 248.133, including a summary of possible outcomes for the project. Tenant representatives will also receive the valuation information provided to the owner under § 248.131. A summary of the plan of action, along with any revisions, will be posted, in accordance with § 248.135, in accessible places in all affected buildings with the name, address and telephone numbers of any tenant representatives, or if none are known, of the local HUD field office, where tenants may obtain a complete copy of the plan of action. The plan of action will also be available at the on-site office for tenant inspection and copying. The tenants are entitled to a 60-day comment period on the plan of action. After taking into consideration the tenant comments, the Department will notify the tenants as to whether the plan is approved. Tenants will also have the opportunity to submit comments and participate in the annual HUD inspections of the project under § 248.147. Any tenants who are eligible for relocation assistance under § 248.185 will be notified of their status. If the tenants submit an expression of interest to purchase the project under § 248.157, they will be entitled to receive all the information which is made available to other qualified purchasers. The Department believes that these provisions provide sufficient notice and comment to all affected tenants of the various stages of the preservation process. Also, there is no need to supply tenants with all of the correspondence between the Department and the owner, since the Department expects that the outcome of any correspondence pertaining to the preservation program will be reflected in the plan of action.

Four commenters raised the concern of enforceability of the notice provisions and suggested that if an owner fails to notify the tenants in accordance with this subpart, that the notice of intent submitted by the owner should be considered void. These comments are in accord with the Department's position. If an owner fails to notify the tenants, in violation of this subpart or of LIHPRA,

then the notice of intent will be invalidated and the owner will be required to submit a new notice of intent under § 248.105.

Four commenters suggested that HUD designate a contact person for arranging meetings, answering questions, and generally assisting tenants who are affected by this subpart. The Department recognizes the need for tenant support. Field office staff will be available to help tenants in understanding the preservation process and to aid them in identifying nonprofit organizations who can help them to promote greater tenant participation and possibly to work towards homeownership under § 248.173 or § 248.175. Also, informational meetings for the tenants may be held by the Department at the discretion of personnel in the local field office. Tenants are welcome to request such meetings.

Another commenter suggested that the Department provide tenants with a list of all properties in the area, designating which are eligible to prepay. The Department intends to distribute a list of eligible low income housing which has been compiled from a survey conducted earlier this year of the local HUD field offices. The field offices shall make this list available to the public upon request.

Subpart C

Section 248.213 (Plan of Action)

One commenter suggested that this section of subpart C be amended to provide the same notice requirements for tenants and State and local governments as is set forth in § 248.135(c) of subpart B. The Department does not have the statutory authority to impose this notification burden on owners proceeding under ELIHPA and has declined to amend this section of the rule.

Section 248.218 (Tenant Notice and Opportunity to Comment)

One commenter recommended that tenants should have the same right to receive information and make comments as provided under § 248.181 of subpart B. The Department believes that this section provides sufficient opportunity for tenant notice and comment and has not amended it as suggested.

Section 248.221 (Approval of a Plan of Action That Involves Termination of Low Income Affordability Restrictions) and Section 248.233 (Approval of a Plan of Action That Includes Incentives)

Two commenters contested the Department's basis for requiring that there be no outstanding findings of

noncompliance with the civil rights legislation enumerated in these sections of the proposed rule prior to approving any plan of action submitted pursuant to this subpart. For the reasons previously stated in the discussion concerning § 248.141(a)(3), the Department has determined that this requirement will remain in the rule.

Subpart D

In response to concerns raised by a State agency and a member of Congress, the Department is implementing section 613(b) of the statute by adding subpart D to the interim rule.

General. Section 613(b) directs the Department to offer incentives to owners of low income housing developed under a State (i.e., non-Federal) housing program, upon application of a State agency, where an owner is able to prepay the State assisted or subsidized mortgage on the housing. The statute states that the level of incentives to be provided under this section should conform to the incentives provided to a similarly situated project under subtitle B of title II of the Housing and Community Development Act of 1987. Since LIHPHA repeals and replaces ELIHPA (except for those owners which elect to proceed under ELIHPA), the reference to title II of the 1987 Act is presumed to mean LIHPHA. Therefore, in implementing section 613(b), this subpart refers to subpart B rather than subpart C.

Although Congress did not specifically define the term "State assisted or subsidized mortgage," the Department construes section 613(b) as being inapplicable to any project that would constitute eligible low income housing under subpart B, such as a section 236 non-insured mortgage.

The Department interprets the statutory language "State assisted or subsidized mortgage" as meaning that the State program must entail a form of mortgage assistance or subsidy. This interpretation of "assisted or subsidized" precludes other forms of housing assistance, such as rental assistance or tax abatement programs, in which there is no direct mortgage subsidy.

In order to implement this provision, the Department will require a two-phase application process. The first will qualify the State's mortgage subsidy program as conforming to the requirements of the statute. The second will require owners of such housing, in order to avail themselves of the incentives, to submit a notice of intent and plan of action similar to that for eligible low income housing under subpart B. Processing of such projects

will, however, be done by the State agency or a designated local housing authority, which will then make application to the Department for the incentives. The costs of appraisals and capital needs assessments will be borne by the State agency. The State agency will review and approve the notice of intent, plan of action and all other submitted documents. The State agency's application for assistance must demonstrate that the amount of incentives, pursuant to subpart B, required to induce the owner to preserve the housing for low and moderate income families, does not exceed that available for housing otherwise designated as "eligible low income housing" under subpart B.

Because prepayment of the State-assisted or subsidized mortgage is a matter of State law and regulation, this subpart does not incorporate the provisions of subpart B regarding the prepayment of such mortgages and the termination of affordability restrictions. Similarly, the rule does not address tenant protections in the event of termination of the affordability restrictions, either in the event of a prepayment or the inability of the Department to provide funding for incentives. With respect to the latter event, section 613(b) requires only that the Department "may" provide incentives upon application of the State agency or a local housing authority. This language contrasts with the Department's obligation to provide incentives pursuant to a plan of action approved for eligible low income housing under subpart B, the lack of funding for which may entitle an owner to prepay and terminate the affordability restrictions. Although the Department, therefore, views its funding obligations under section 613(b) as discretionary, as opposed to its funding of approved Plans of Action for otherwise eligible low income housing which is solely subject to funding availability, it will fund such applications by a State agency or local housing authority so long as such funding will not interfere with the funding of an approved plan of action for eligible low income housing under subparts B or C.

The statutory language presents some interpretive difficulties by generally requiring, as noted above, that incentives made available to owners under State assisted programs conform with those made available to owners of eligible low income housing. However, with two exceptions discussed below, the statute is silent with respect to the terms and conditions for rendering assistance and incentives. The

Department believes that since the amount of incentives is inextricably bound to the determinations of value, it would be incongruous to require a less rigorous determination of value for State assisted mortgages. Further, since the amount and type of incentives in subpart B is dependent on an owner's decision to maintain or transfer ownership in the housing, the Department believes that the same requirements should apply to State assisted mortgages and owners. Thus, the rule requires owners of State assisted projects to follow the process for notices of intent and plans of action required for owners subject to subpart B in order to receive incentives.

Section 8 assistance. The statute generally requires that section 8 assistance, awarded as an incentive under an approved plan of action, conform to the requirements for such assistance made available under subpart B; that is, it is available for all very low and lower income families; rent levels reflect those necessary to implement an approved plan of action; and no tenant shall pay in excess of the lesser of 30% of adjusted gross income or the fair market rent for rent. The rule, by incorporating the corresponding provisions of subpart B, reflects these statutory requirements.

The statute further specifies in section 613(b)(2) that if the owner receives section 8 assistance, the project will be subject to the standards for maintenance and sanctions in "Section 224(e) of the Housing and Community Development Act of 1987." Since LIHPHA has replaced the 1987 Act in its entirety with the instant statute and since neither statute contains a provision at section 224(e), the Department believes that this language is a vestigial reference to a former version of LIHPHA. It is intended to refer to section 222(d) ("Housing Standards") of the LIHPHA. The rule reflects this interpretation.

Restrictions. Section 613(b)(3) requires an owner of housing awarded incentives under this subpart to maintain the housing as affordable to low and moderate income tenants for the period for which the assistance is received. This section departs from § 248.145(d) of subpart B which requires maintenance of the affordability restrictions for the remaining useful life of the project, such determination of which may not be appealed by the owner for 50 years following the agreement to maintain the affordability restrictions. Section 248.169(b) further prescribes remedies available to the owner if the Department fails to renew

the contract for the assistance for the term of the plan of action. While subpart D generally conforms with the applicable requirements of subpart B, the rule requires maintenance of the affordability restrictions for State assisted mortgages only if the contract for assistance is renewed timely. The statute is silent with respect to a State's option to provide its own substitute assistance, in the absence of Federal assistance, in order to insure extension of the preservation agreement. While States may include such a provision in their preservation agreements, the rule tracks the statutory language.

Preemption. The Department has not incorporated § 248.7 into subpart D. The references in section 232(a)(3) and 232(b) to loans which are inconsistent with the provisions of "this subtitle" (i.e., subtitle A of title VI) indicate that section 232 is not intended to apply to subtitle B, of which section 613(b) is a part.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Subpart A

Two commenters suggested that HUD waive the equity requirements for rehabilitation loans insured under this subpart. There is no statutory basis for the Department to consider such a proposal. Further, prudent underwriting practices demand an equity requirement. The rule has not been changed to reflect this comment. The commenter further suggests that owners receive an 8 percent return on the equity requirement for a rehabilitation loan. There is no statutory language in support of this suggestion, and it has not been adopted. Another suggestion by the same commenter would permit seller financing of the equity requirement for rehabilitation loans with the seller receiving "market return" on the loan. The Department has no objection to a seller providing take back financing for the equity requirements on rehabilitation loans. However, the seller may not charge interest at a rate in excess of that of the rehabilitation loan. The related party rule has been amended to reflect this change.

One commenter suggested that the Department use its housing standards when underwriting a rehabilitation loan insured under this subpart. The Department intends that rehabilitation activities under this program bring the project back to its original physical standard for occupancy.

Another comment stated that improvements financed through rehabilitation loans should include

health and safety features for the elderly and disabled, including alarm systems, grab bars, sprinkler systems, etc. For projects constructed originally for the benefit of the elderly and disabled where these features were not included, the Department will permit them in the rehabilitation loan. In some jurisdictions retrofitted sprinkler systems are being required for high-rise structures regardless of the target tenant population. The Department will recognize these costs as well. These items will be handled administratively and do not require a change in the rule.

Another commenter suggested that the Department underwrite rehabilitation loans at 100 percent of required repairs and administer loan draws using the Flexible Subsidy program methodology. The Department intends to maintain the distinction between section 241(a) rehabilitation loans and Flexible Subsidy Capital Improvement Loans. Section 241(a) loans will be administered by the mortgagee on a draw basis like any insured rehabilitation or new construction loan program. Flexible Subsidy Capital Improvement Loans will be administered by the Department utilizing the program's disbursement procedures. The rule has not been changed to reflect this comment.

Subpart E

Section 241.1000 Purpose and Scope

The Department received eighteen comments suggesting that section 241(f) equity and acquisition loans be combined with section 241(a) rehabilitation loans. Most of the commenters were concerned with the financing costs associated with two loans versus one loan. With the exception of any ancillary fees charged by commercial mortgagees, financing fees for insured mortgages are based on the mortgage amount. It is doubtful, therefore, that two loans would be any more costly to the transaction than one. One commenter stated that separate rehabilitation loans and equity or acquisition loans would be difficult to sell on the secondary mortgage market. However, all forms of HUD-insured mortgages have been accepted in the secondary mortgage market and HUD does not foresee any reason to believe that these loans would not also be acceptable. Another commenter suggested that in combining the two loan programs, the Department waive its review and inspection requirements for section 241(a) rehabilitation loans.

The Department believes that the statute (see sections 214(b) and 219(b)) specifically contemplates and authorizes

separate loans for rehabilitation and equity or acquisition, as stated in § 241.1067 of the proposed rule; however, HUD will consider combining the two programs to facilitate processing of loans pursuant to approved plans of action. (See also the comments on § 241.1067 below.) However, the Department will not waive its review and inspection requirements, pursuant to section 241(a) for the rehabilitation component of the loan.

Section 241.1010 Feasibility Letters

One comment requested that the Department make a feasibility letter for a section 241(f) acquisition loan available to priority purchasers who have submitted an expression of interest pursuant to § 248.157(f). This comment confuses the different processes designed in the part 248 rule for accepting expressions of interest and processing plans of action pursuant to an owner's acceptance of a bona fide offer. An owner's decision to offer the project for sale does not contain an application for a section 241(f) acquisition loan. That application is made when the purchaser and the seller jointly file the plan of action to transfer the project. However, purchasers will be advised pursuant to § 248.157(f) of the amount of the preservation equity and the maximum amount of a section 241(f) acquisition loan.

Another commenter suggested that the need for feasibility and conditional commitment letters are obviated by the identification of project income, expenses and required repairs in the appraisal. The income, expenses and repairs identified in the appraisal are for the purpose of determining a project's values in accordance with section 213 of the statute. The actual project income, expenses and required repairs will be identified in the plan of action. The Department will accept applications for rehabilitation and acquisition loans with the filing of a plan of action to transfer the project to a qualified purchaser. Similarly, the Department will accept applications for rehabilitation loans and equity loans with a plan of action to extend the affordability restrictions.

Section 241.1015 Application and Commitment Fees

One comment suggested that the Department authorize the use of proceeds of an acquisition loan insured under this part to pay financing and application fees. The statute, in section 241(f)(3)(B), specifically limits the maximum insurable acquisition loan under this subpart to 95 percent of the preservation equity except, in the case

of priority purchasers, any expenses associated with the acquisition, loan closing and implementation of plans of action may also be included. The Department is authorized, however, under sections 220(d)(2)(F) and 221(d)(2) to provide capital grants to priority purchasers in order to reimburse them for expenses incurred in the transfer of the project which are not included in an acquisition loan. Therefore, the Department will include the reasonable costs of applications and financing in a capital grant as part of its approval of a plan of action to transfer the project to a priority purchaser under a voluntary sale and any qualified purchaser under a mandatory sale. (See further discussions at § 241.1067 below.)

Section 241.1020 Commitments

One commenter requested that the Department combine conditional and firm commitment applications and lower the fees charged for making the application. The Department is considering bypassing the conditional commitment stage; however, it does not contemplate lowering its application fees.

Section 241.1035 Charges by Lender

One commenter asserted that the limitation on the initial service charge in § 241.1035(b) conflicted with the debt service coverage requirements of § 241.1067. The Department does not see any conflict between the two provisions, and the rule has not been changed to reflect the comment. Another comment requested that provisions regarding mortgagee consent to section 241(f) loans be clearly stated in the rule. The proposed rule did so at § 241.1120.

Section 241.1046 Rental Assistance

Three comments stated that the term of section 8 housing assistance payments contracts offered as an incentive to an owner or purchaser to support section 241(f) equity or acquisition loans should be coincidental with the term of the mortgage. Section 8 contract terms are limited to those provided for in appropriations acts. However, section 241(f)(7) requires the Department, when underwriting the mortgage insurance, to assume that the assistance will be available for the full period of time during which the plan of action is in effect. The proposed rule at § 241.1046(a) reflects this statutory intent. Further, § 248.169(b) of the interim rule prescribes the actions the Department must take to protect the owner and tenants should an assistance contract not be renewed.

Two commenters objected to the acceleration provision of § 241.1046(b),

stating that it would make loans unmarketable, presumably on the secondary market. This provision reflects the language of the statute at section 241(f)(7), and will protect the mortgagee in case there are insufficient appropriations to fund a renewal of an assistance contract to support an equity or acquisition loan insured under this subpart. The provision does not affect the mortgage insurance or compromise a mortgagee's ability to file a claim in the event of a default. Indeed, its probable intention is to allow the Department the option of immediately causing a default, and subsequent assignment of the mortgage in exchange for insurance benefits, instead of having the mortgagee wait for a monetary default and then proceeding to an assignment. The last comment suggested that the Department clarify that it will accept an insurance claim in the event that an assistance contract is not renewed. While section 241(f)(8) directs the Department to "take actions * * * to avoid default," the Department acknowledges its obligation under the mortgage insurance contract to pay insurance claims upon proper notification and assignment by the mortgagee.

Section 241.1060 Maturity

The Department received 86 comments objecting to the 20-year term for loans insured under this subpart for a variety of reasons: (1) The 20-year term would increase the likelihood of preservation rents exceeding the Federal cost limit, enabling more owners to prepay their mortgages and terminate the affordability restrictions; (2) the 20-year term is more costly to the Federal government than a 40-year term because of the assistance which must be provided to support increased debt service costs; (3) a 20-year term would make purchase of the loan for the Government National Mortgage Association's mortgage backed securities (MBS) program infeasible; and (4) a 20-year term would limit an owner's opportunity to realize the full 70 percent of preservation equity under an equity loan.

While it is true that the increased debt service associated with a shorter term loan might in some instances cause a project's aggregate preservation rents to exceed the Federal cost limit, the Department does not view this as impacting on the likelihood that an owner will prepay the mortgage and terminate the affordability restrictions. If the transfer preservation rents exceed the Federal cost limits, an owner may elect to prepay subject to the mandatory sales provisions of § 248.161 of this title.

An owner may prepay only if it does not receive a bona fide offer at the preservation value. This is in effect identical to a voluntarily sales offer under § 248.157, where the owner may also prepay only if it does not receive a bona fide offer to purchase. Since the opportunity to prepay is a direct result of the lack of a purchaser available or willing to make a bona fide offer, the Department is not persuaded that an increase in the term of an acquisition loan would have any effect on prepayment.

While it is true that a shorter term loan would carry higher amortization costs, it is not true that a longer term loan would, therefore, be less costly to the government. The extra subsidy assistance necessary to support a longer term loan is greater than the reduction in annual debt service costs attendant to a longer term loan. The Department is, therefore, reluctant to support a loan program with inherently higher costs, the benefits of which have not been demonstrated.

The Department does not ordinarily structure program regulations around the potential for third parties to create investment opportunities. The Department's multifamily insured loan programs have traditionally carried 40-year terms, which have most likely been a contributing factor to the terms of various MBS programs. The Department is confident that the market can adjust to an insured mortgage of a lesser term.

Section 241.1067 Maximum Loan Amount

Fifteen commenters offered various suggestions for nonprofit purchasers to include soft costs and transaction costs in acquisition loans in addition to the maximum loan amount. As previously discussed in the comments to § 241.1015, the Department will include such costs which are not covered in the acquisition loan in a capital grant for priority purchasers in all sales and qualified purchasers in mandatory sales.

One comment stated that the Department should accept rehabilitation, equity and acquisition financing from any source, public or private, without necessarily using section 241 mortgage insurance. The Department's position is that the plan of action may include an uninsured rehabilitation, equity or acquisition loan provided that the terms of the loan, including monitoring of rehabilitation, and default acceleration and foreclosure provisions are acceptable to the Department.

The Department recognizes that purchasers may have difficulty

obtaining the additional 5% of transfer preservation equity which may not be financed through an acquisition loan under this section. In order to make financing more accessible, seller financing will be permitted as long as it meets the requirements of the related party rule in § 248.101. Any seller financing must be in the form of a loan, not a grant, and the total amount of the financing, including the acquisition loan provided under this subpart, may not exceed the project's transfer preservation equity, plus in the case of a priority purchaser, any expenses associated with the acquisition, loan closing, and implementation of the plan of action. Also, the interest rate charged by a seller on any financing may not be in excess of the interest rate imposed on the acquisition loan under this subpart. A new § 248.157(q) has been added to part 248 to provide for seller financing.

A commenter suggested that the 30 percent equity requirement for equity loans be construed as not requiring the owner to post any further equity to obtain the loan.

The Department concurs with the commenter. However, owners may have to pay loan fees and other transaction costs incidental to receiving such loans. The Department will not provide additional incentives for this purpose. A commenter suggested that priority purchasers be subject only to a 5 percent holdback. The 5 percent holdback pertains to equity loans. Only owners who extend low income affordability restrictions, and not purchasers, are eligible for equity loans, and the holdback requirement does not apply to purchasers. Another comment suggested that standard debt service coverage and vacancy allowance practices be used in setting the actual rents for servicing acquisition loans. The Department intends to assume a 3% vacancy cost in approving acquisition loans.

One comment asked why mortgagees, and in particular servicing mortgagees, were prohibited from charging transaction fees for consenting to secondary financing insured under this subpart. The mortgagee is prohibited from withholding consent to an equity or acquisition loan or an insured rehabilitation loan. HUD considers the imposition of a substantial transaction fee to be tantamount to the withholding of consent to the second mortgage. Moreover, since the mortgagee is prohibited from withholding consent, the servicer would undertake only a very limited review of the secondary financing. Therefore, the Department

sees no basis for the mortgagee to charge a transaction fee.

One commenter inquired whether a mortgagee could withhold consent to a section 241(a) rehabilitation loan. Section 241.1061(c) of the proposed rule prohibited the holder of an insured mortgage from withholding its consent to a rehabilitation loan insured under section 241(a) with respect to "eligible multifamily housing," as defined in that section. This provision implements section 204(b) of the Department of Housing and Urban Development Reform Act. The interim rule retains the language of the proposed rule.

Section 241.1069 Escrow Requirements

One comment objected to HUD or a State housing finance agency controlling the disbursement of the 10 percent holdback from equity loans. The rule tracks the statutory language at section 241(f)(2)(B)(ii) and has not been changed.

One commenter noted that the language of this section suggested the possible use of insured advances with respect to equity and acquisition loans and further suggested a methodology similar to that used in the section 223(f) program. The Department interprets the statute as requiring disbursement of section 241(f) loan proceeds in full at loan closing, except to account for any phase-in of rents, and except for the 10 percent holdback on equity loans.

Therefore, the rule has not been changed to reflect this comment. Another commenter suggested that insured advances be deleted entirely, the Department also waiving its review and inspection requirements under section 241(a). As stated above (see § 241.1000), the Department will continue to review and inspect rehabilitation work performed under section 241(a).

Another commenter suggested that insured equity loans be fully disbursed at closing with the 10 percent holdback considered "subject to escrow." The statute at section 241(f)(2)(B)(ii) conditions the issuing of insurance on the holdback, held by the mortgagee for a period of not less than five years, to ensure compliance with the maintenance standards at section 222(d) of LIHPHA. The rule reflects the statutory provisions.

With respect to the phase-in provisions in § 241.1069(b), another commenter stated that it was unlikely that any operating deficit would be required, and that a letter of credit posted by the borrower would offer the mortgagee sufficient protection in case a deficit actually occurred. While the

Department generally agrees that operating deficits during the rent phase-in period will be exceptional, it sees no reason to amend this protection. Moreover, the phase-in provision is specifically contemplated by section 241(f)(5)(B).

Section 241.1100 Prepayment Privileges and Charges

One comment suggested that the Department include the provisions of Mortgagee Letter 87-9 to loans insured under this subpart. Mortgagee Letter 87-9 addresses prepayment lock-outs and prepayment charges imposed by lenders in bond-financed and other investor-financed transactions. Section 241.1100 provides the regulatory basis for HUD's approval of such lock-outs and charges. There is no need to include the provisions of the Mortgagee Letter in the regulation itself.

Section 241.1120 Mortgagee's Consent

One commenter suggested that the Department expand the coverage of this section by prohibiting a mortgagee from withholding its consent on any noninsured secondary financing pursuant to an approved plan of action. The Department has revised the language of this section to clarify that the prohibition on withholding consent to an equity loan is applicable with respect to both insured and noninsured equity loans. In addition, the prohibition has been expanded to include a prohibition on withholding consent to insured or noninsured acquisition loans. Sections 241(f)(2)(A) and (3)(A) define the terms "equity loan" and "acquisition loan" respectively without regard to whether the loan is insured by HUD. Section 241(f)(9) prohibits a HUD-approved mortgagee from withholding consent to an "equity loan" or "acquisition loan" on a property on which that mortgagee holds a mortgage. Thus, on the basis of the literal statutory language, HUD believes that the prohibition on withholding consent is applicable to both insured and noninsured equity and acquisition loans. (By contrast, the prohibition on withholding consent to a rehabilitation loan is restricted to loans insured under section 241; see section 241(g)(2) of the National Housing Act, as added by section 204(b) of the Department of HUD Reform Act of 1989.)

Subpart F—Insurance for Equity Loans—Contract Rights and Obligations

Section 241.1210 Condition for Payment of Insurance Benefits

One comment stated that this section should be clarified to ensure that all

regulatory requirements regarding timely notice and other actions would also apply to an application for insurance benefits under this section. The proposed rule incorporated such regulatory requirements by cross-referencing the provisions of § 207.258 of this title. Further clarification is not deemed necessary.

Section 241.1235 Cross Default

One comment requested that the phrase "and the holder thereof initiates a foreclosure proceeding" be deleted from this section. The Department has retained the quoted language. In cases where the holder elects to assign the loan to HUD rather than foreclosing, there is no need to protect HUD's interests by creating a cross-default.

Another commenter stated that a mortgagee should only be obligated to inform the Department of defaults of which the mortgagee is aware. There is no expectation that a mortgagee be obligated to inform the Department of mortgage violations of which it does not have knowledge.

Section 241.1245 Insurance Endorsement

One commenter suggested that secondary market lenders be consulted when loans under this subpart are endorsed to avoid any secondary market problems. HUD presumes that primary lenders intending to sell their loans on the secondary market will consult with secondary lenders to ensure the marketability of their loans. The Department sees no need to amend the rule to address what is essentially a market transaction.

Part 219—Flexible Subsidy Program for Troubled Projects

Subpart C

The Department received one comment concerning part 219 of this title. The commenter suggested waiving any equity requirements for capital improvement loans provided to priority purchasers. Pursuant to § 219.305(c), an owner must contribute 25 percent of the total estimated cost of the needed capital improvements; however, if the owner is a nonprofit organization other than a cooperative association, it is exempt from this requirement. Therefore, cooperative associations, are subject to an equity requirement when applying for a capital improvement loan.

Part 236—Mortgage Insurance and Interest Reduction Payment for Rental Projects

Section 236.60 and paragraph (b) of § 236.55 have been restated in this

interim rule to correct an error in the publication of the April 1, 1991 revised version of title 24 of the CFR in which language from both sections was inadvertently omitted.

Miscellaneous Comments

Thirty-four miscellaneous comments were received regarding a variety of issues that were not covered within any specific section of the rule.

A concern was raised by three commenters that an owner may attempt to interfere with the tenants right to organize or participate in the prepayment process. The commenter requested that a penalty be imposed or a warning clearly stated in the regulations in order to preclude any owner interference. The Department does not have express authority to impose a penalty on owners. If tenants feel that their right to organize has been violated, they may seek redress through any State or local tenant/landlord institutions or State or local law.

Three commenters want the Department to designate a contact person that will provide tenants with access to information and general planning assistance throughout the preservation process. The Department has already designated personnel in the regional and field offices whose primary responsibilities are providing information and guidance to the tenants and acting as facilitators between tenant groups, mortgage companies and non-profit organizations.

Another commenter requested that it be notified of all elderly projects that have submitted their second notice of intent. The Department has compiled a list of eligible low income housing and this information may be obtained from local field offices upon request.

Two commenters stated that the regulation should be neutral concerning an owner's choice of retaining or selling its property and should not undermine an owner's right to choose, as the commenters claim the sales provisions in the proposed rule do. The regulation reflects the statutory requirements relative to retaining or selling a project.

A commenter requested that a distinction be made between large and small projects (under 100 units) so that profit motivated developers could more easily purchase small projects. The same commenter stated that the regulations should specifically enable individual owners, who are disabled, over 65 or financially stressed to be able to sell their property outright and receive cash. The implication is that such owners should not have to follow the regulatory process. The statute does not distinguish between small and large

projects. A profit-motivated purchaser may buy projects so long as it meets the requirements of a qualified purchaser.

There was a concern by a commenter that the provision of financial incentives under a plan of action may be hampered by subsidy layering reviews. Pursuant to section 102(d) of the Housing and Urban Development Reform Act of 1989, the Department must perform a subsidy layering analysis to ensure that HUD funds are expended in the least costly manner, while assuring project feasibility. However, the overall preservation process, including approval of the plan of action, should not be materially affected by this requirement in terms of time delay.

Four commenters asked about advances to the owners to finance capital improvements, annual increases to section 8 and moderate income rents, and assistance to state-assisted or subsidized projects to prevent prepayment. The questions concerning advances pertain to section 611(b) of the statute and are not germane to this regulation; a rule implementing section 611(b) will be published separately for comment. While this rule does not implement section 612, which governs rent increases for moderate income and market-rate tenants, its impact on tenant rents has been explained in the discussion concerning § 248.145 of this subpart. Section 613(b), relating to the state mortgage programs, is implemented as subpart D herein.

Findings and Other Matters

This rule constitutes a major rule, as determined by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the authority of Executive Order 12291 on Federal Regulations issued on February 17, 1981. A copy of the Regulatory Impact Analysis has been transmitted to the Office of Management and Budget, and is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule was listed as item 1349 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53396), under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public

inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Under section 605 of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it carries out statutorily-mandated limitations on prepayment of

the affected mortgages. Any economic impact is a direct consequence of the statute and is not separately imposed by this rule.

The Information collection requirements contained in the rule have been submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, HUD Desk Officer, room 3001, New Executive Office Building, Washington,

DC 20503, for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

TABULATION OF ANNUAL REPORTING BURDEN

| Description of information collection and applicable program reference | Number of respondents 17.1x | Number of responses per respo 17.2= | Total annual responses 17.3x |
|------------------------------------------------------------------------------------|--------------------------------|----------------------------------------|---------------------------------|
| A. First notice of intent 1990 statute: Section 248.105 | 509.00 | 1.00 | 509.00 |
| B. Election to proceed under 1987 statute: 248.5 | 120.00 | 1.00 | 120.00 |
| C. Appraisal: 248.111 | | | |
| D. Second notice of intent: 248.133 | 283.00 | 1.00 | 283.00 |
| E. Plans of action: | | | |
| 1. Termination of Affordability: 248.141 | 4.00 | 1.00 | 4.00 |
| 2. Extension of Affordability/Transfer of Project: 248.145 | 465.00 | 1.00 | 465.00 |
| (Resident councils plans included in L) | | | |
| F. Expression of interest from potential purchasers: 248.157(e) | 283.00 | 1.00 | 283.00 |
| Additional information from resident councils: 248.173(b) | 39.00 | 1.00 | 39.00 |
| G. Owner provides potential purchaser information on housing: 248.157(b) | 283.00 | 1.00 | 283.00 |
| H. Bona fide offers | 283.00 | 1.00 | 283.00 |
| Additional information from resident councils | 39.00 | 1.00 | 39.00 |
| I. Owner provides information on displaced tenants: 248.165(b) | 4.00 | 1.00 | 4.00 |
| J. Notices of vacancies from public housing agencies: 248.165(c) | 4.00 | 1.00 | 4.00 |
| K. Owner notifies HUD of expiring section 8 contracts: 248.169 ¹ | 0.00 | 1.00 | 0.00 |
| L. Resident homeownership plan: 248.173(d) | 39.00 | 1.00 | 39.00 |
| M. State preservation plan: 248.177(d) ² | 6.00 | 1.00 | 6.00 |
| N. State insurance program application, ² 1990 statute: Section 248.301 | 1.00 | 1.00 | 1.00 |
| O. Application for project assistance statute: 248.319 | 3.00 | 1.00 | 3.00 |
| Totals | 2,365.00 | | |

¹ See item 13 of supporting statement.

² These items will be reported only in first year of program.

The Department specifically requests comments on how the paperwork burden on the public resulting from the interim rule may be reduced.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that some of the policies in this rule will have a significant impact on the formation, maintenance and general well-being of the family. Achievement of homeownership by low income families under the regulation can be expected to support family values, by helping families to achieve security and

independence, by enabling them to live in decent, safe and sanitary housing, and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

The General Counsel, as Designated Official under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, has determined that this interim rule does not have "takings implications," as defined in HUD's "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." The interim rule does not deny the owner an economically viable use for the project. Instead, the owner will, at a minimum, maintain ownership of the project with the below market rate mortgage or rental subsidies in place and with greatly enhanced access to the full equity in the project as residential rental housing; alternatively, the owner may transfer the project under a plan of action in which the Secretary will

provide incentives that will enable the owner to realize the full value of the project at its highest and best use, or may be entitled to prepay the mortgage.

The Catalog of Federal Domestic Assistance program number for this rule is 14.137 (Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families).

List of Subjects

24 CFR Part 50

Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

24 CFR Part 219

Loan programs—housing and community development, Low and moderate income housing.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 248

Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department amends title 24 of the Code of Federal Regulations as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 is revised to read as follows:

Authority: 42 U.S.C. 4332, 42 U.S.C. 3535(d).

2. In § 50.20, paragraph (n) is revised to read as follows:

§ 50.20 Categorical exclusions.

(n) Approval of mortgage prepayments or plans of action (including incentives) under the Emergency Low Income Housing Preservation Act of 1987 or the Low Income Housing Preservation and Resident Homeownership Act of 1990, and approval of mortgage prepayments under other statutes or authorities, when the proposal does not involve demolition of any buildings, or parts of any building, containing the primary use served by the project.

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

3. The authority citation for part 219 is revised to read as follows:

Authority: 12 U.S.C. 1715z-1a; 42 U.S.C. 3535(d).

4. In § 219.325, the introductory text of paragraph (b) and paragraph (b)(3) are revised and a new paragraph (b)(5) is added to read as follows:

§ 219.325 Effect on rental rates.

(b) If rent increases that would result from the debt service and other expenses of a capital improvement loan

under subpart C of this part for a project would cause the rents of lower income residents of the project to be higher than the amount that would be allowed for eligible families under 24 CFR 813.107, or where appropriate to implement a plan of action under part 248 of this chapter, the Secretary may consider taking any or all of the following actions:

(3) Notwithstanding § 219.320(b), reduce the rate of interest on the capital improvement loan to a rate not lower than one percent.

(5) Permit repayment of the debt service to be deferred as long as the low and moderate income character of the project is maintained in accordance with § 219.110(b).

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

5. The authority citation for part 221 is revised to read as follows:

Authority: 12 U.S.C. 1707(a), 1715(b), 1715f, 42 U.S.C. 3535(d).

6. In § 221.524, paragraph (e) is revised to read as follows:

§ 221.524 Prepayment privileges.

(e) *Prepayment of mortgages subject to part 248.* Where the mortgage described in paragraph (a)(1) of this section is, or prior to assignment to the Commissioner was, insured under section 221(d)(3) of the Act and the mortgagor receives project-based assistance under parts 880, 881 or 886 of this title, or where the mortgage is, or prior to assignment to the Commissioner was, insured under section 221(d)(5) of the Act, the mortgage may be prepaid in full only in accordance with a plan of action approved by the Commissioner under part 248 of this chapter.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

7. The authority for part 236 is revised to read as follows:

Authority: 12 U.S.C. 1715b and 1715z-1; 42 U.S.C. 3535(d).

8. In § 236.55, paragraph (b) is revised to read as follows:

§ 236.55 Rental charges.

(b) *Monthly rental charge.* Except as agreed to by the Commissioner pursuant to a plan of action approved under part 248 of this chapter, monthly rental charges shall be calculated as follows:

(1) *Tenant Rent for qualified tenants whose initial lease is effective on or after May 1, 1983.* The Tenant Rent payable by a Qualified Tenant shall be the greater of the Basic Rent or 30 percent of the tenant's Adjusted Monthly Income, but not more than the Market Rent. In the case of tenant paid utilities, the Utility Allowance may not reduce the Tenant Rent below 25 percent of Adjusted Monthly Income.

(2) *Tenant Rent for qualified tenants whose initial lease was effective before May 1, 1983.* The Tenant Rent shall be calculated in accordance with paragraph (b)(1) of this section, except that instead of 30 percent, the percentage applied to Adjusted Monthly Income shall be as follows:

| Effective date of recertification | Percentage |
|-------------------------------------|------------|
| May 1, 1983 to Sept. 30, 1983..... | 27 |
| Oct. 1, 1983 to Sept. 30, 1984..... | 28 |
| Oct. 1, 1984 to Sept. 30, 1985..... | 29 |
| Oct. 1, 1985 and after | 30 |

(3) *Limitation on tenant's monthly rental payment.* In no event shall the monthly rental exceed the HUD-approved market rental.

9. Section 236.60 is revised to read as follows:

§ 236.60 Excess rental charges.

Except as agreed to by the Commissioner pursuant to a plan of action approved under part 248 of this chapter or in connection with an adjustment of contract rents under section 8(c)(10) of the United States Housing Act of 1937, the mortgagor shall agree to pay monthly to the Secretary the total of all rental charges collected in excess of the Basic Rent in accordance with the instructions prescribed by the Secretary.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

10. The authority for part 241 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-6, 42 U.S.C. 3535(d).

11. Section 241.166 is added to subpart A to read as follows:

§ 241.166 Special underwriting standards for eligible multifamily housing.

(a) For purposes of this section, the term "eligible multifamily housing" means any housing financed by a loan or mortgage that is—

(1) Insured or held by the Commissioner under section 221(d)(3) of

the National Housing Act and assisted under section 101 of the Housing and Urban Development Act of 1965 or section 8 of the United States Housing Act of 1937;

(2) Insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act; or

(3) Insured, assisted or held by the Secretary under section 236 of the National Housing Act.

(b) When underwriting a loan under subpart A of this part in connection with eligible multifamily housing, the Commissioner may assume that any rental assistance provided for purposes of servicing the additional debt will be extended for the term of the rehabilitation loan. The Commissioner shall exercise prudent underwriting practices in insuring rehabilitation loans under subpart A of this part.

(c) The holder of an insured mortgage which is recorded prior to the rehabilitation loan covering eligible multifamily housing may not withhold its consent to the rehabilitation loan or the security instrument executed in connection with the rehabilitation loan, and may not charge a fee as a condition to its consent to such loan or security instrument.

12. Section 241.251 is amended by adding a paragraph heading to paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 241.251 Cross-reference.

(a) *Projects with a HUD-insured or HUD-held mortgage.* * * *

(c) *Projects without a HUD-insured or HUD-held mortgage.* The provisions of subpart D of this part shall be applicable to a project without a HUD-insured or HUD-held mortgage that is receiving a loan insured under subpart A of this part in connection with a plan of action approved by the Commissioner under part 248 of this chapter.

13. Subpart E (consisting of §§ 241.1000 through 241.1120) and subpart F (consisting of §§ 241.1200 through 241.1250), are revised to read as follows:

Subpart E—Insurance for Equity Loans and Acquisition Loans—Eligibility Requirements

| Sec. | |
|----------|----------------------------------|
| 241.1000 | Purpose and scope. |
| 241.1005 | Definitions. |
| 241.1010 | Feasibility letter. |
| 241.1015 | Application and commitment fees. |
| 241.1020 | Commitments. |
| 241.1025 | Refund of fees. |
| 241.1030 | Mortgage insurance premiums. |
| 241.1035 | Charges by lender. |
| 241.1040 | Eligible lenders. |

| Sec. | |
|----------|--------------------------------------------------------------------------------------------------------------------|
| 241.1045 | Note and security form. |
| 241.1046 | Rental assistance. |
| 241.1050 | Method of loan payment. |
| 241.1055 | Date of first payment to principal. |
| 241.1060 | Maturity. |
| 241.1065 | Maximum loan amount—loans insured in connection with a plan of action under subpart C of part 248 of this chapter. |
| 241.1067 | Maximum loan amount—loans insured in connection with a plan of action under subpart B of part 248 of this chapter. |
| 241.1069 | Escrow requirements. |
| 241.1070 | Agreed interest rate. |
| 241.1080 | Eligibility of title. |
| 241.1085 | Title evidence. |
| 241.1090 | Accumulation of next premium. |
| 241.1095 | Application of payments. |
| 241.1100 | Prepayment privilege and charges. |
| 241.1105 | Late charges. |
| 241.1120 | Mortgagee's consent. |

Subpart F—Insurance for Equity Loans and Acquisition Loans—Contract Rights and Obligations

| Sec. | |
|----------|----------------------------------------------|
| 241.1200 | Cross-references. |
| 241.1205 | Payment of insurance benefits. |
| 241.1210 | Condition for payment of insurance benefits. |
| 241.1215 | Calculation of insurance benefits. |
| 241.1220 | Termination of insurance benefits. |
| 241.1230 | No vested right in fund. |
| 241.1235 | Cross default. |
| 241.1245 | Insurance endorsement. |
| 241.1250 | Effect of endorsement. |

Subpart E—Insurance for Equity Loans and Acquisition Loans—Eligibility Requirements

§ 241.1000 Purpose and scope.

(a) Section 231 of the Emergency Low Income Housing Preservation Act of 1989 ("ELIHPA") amended the National Housing Act by adding a new subsection (f) to section 241. This section authorizes the Secretary to provide insurance for an equity loan as a vehicle for the owner of an eligible multifamily project to capture a portion of the project's equity, in connection with a plan of action approved by the Commissioner under ELIHPA.

(b) Section 602 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA") amended section 241 by expanding its scope to include both equity loans for owners, and acquisition loans for purchasers, under a plan of action approved under the provisions of the 1990 Act, and by making other changes. The provisions of section 241(f) as amended by LIHPRHA are applicable to owners with plans of action being processed under part 248, subpart B of this chapter, which implements LIHPRHA.

(c) The provisions of section 241(f) of the Act as they were in effect prior to LIHPRHA remain in effect for owners with plans of action being processed

under part 248, subpart C of this chapter, which implements ELIHPA.

(d) The insurance of an equity loan or acquisition loan under subpart E of this part may be provided only as a specific element of a plan of action approved by the Commissioner under part 248 of this chapter and is not available under any other departmental program.

(e) Unless otherwise indicated, the provisions of subparts E and F of this part are applicable to loans insured in connection with plans of action being processed under either subpart B or C of part 248 of this chapter.

(f) An owner or purchaser may obtain both a rehabilitation loan under subpart A of this part and an equity loan or acquisition loan under subpart E of this part.

§ 241.1005 Definitions.

(a) All of the definitions of § 241.1 apply to equity and acquisition loans insured under subpart E of this part except the following definitions:

§ 241.1(i)—Borrower;
§ 241.1(k)—Energy conserving improvements;
§ 241.1(l)—Solar energy system.

(b) As used in subpart E of this part, the following terms have the meaning indicated:

Acquisition loan means a loan or advance of credit made to a purchaser of eligible low income housing which is made for the purpose of implementing a plan of action approved in accordance with part 248 of this chapter.

Borrower means the owner or qualified purchaser of an eligible low income housing project, which owner receives and becomes primarily obligated for the repayment of an equity loan. With respect to loans insured in connection with a plan of action under part 248, subpart C of this chapter, the term includes a public entity, a nonprofit organization or a limited equity cooperative, which entity is purchasing an eligible low income housing project by means of an equity loan and is obligated for the payment of the equity loan.

Eligible low income housing has the same meaning as provided at § 248.101 or § 248.201 of this chapter, with respect to loans insured in connection with plans of action under subparts B or C of part 248 of this chapter.

Equity means, for purpose of subparts E and F of this part only, the difference between the fair market value of the project as determined by the Commissioner and the outstanding indebtedness relating to the property.

Equity Loan means a loan or advance of credit to the owner of an eligible low

income housing project which is made for the purpose of implementing a plan of action approved in accordance with part 248 of this chapter.

Extension preservation equity has the same meaning as provided at § 248.101 of this chapter.

Limited equity cooperative means a tenant cooperative corporation which, in a manner acceptable to the Commissioner, restricts the initial and resale price of the shares of stock in the cooperative corporation so that the shares remain affordable to lower income families and moderate income families.

Low income families has the same meaning as provided at § 248.101 of this chapter.

Moderate income families has the same meaning as provided at § 248.101 of this chapter.

Plan of action has the same meaning as provided at § 248.101 or § 248.201 of this chapter.

Preservation equity has the same meaning as provided at § 248.101 of this chapter.

Priority purchaser has the same meaning as provided at § 248.101 of this chapter.

Qualified Purchaser has the same meaning as provided at § 248.101 of this chapter.

§ 241.1010 Feasibility letter.

(a) *Request for study.* The owner may request the Commissioner to undertake a feasibility analysis of an equity or acquisition loan, and issue a feasibility letter. At the discretion of the Commissioner the feasibility analysis may be undertaken or denied.

(b) *Findings.* The issuance of a feasibility letter indicates completion of the Commissioner's preliminary analysis for the insurance of an equity or acquisition loan. The feasibility letter shall contain the Commissioner's estimate of the supportable loan amount, based upon the project's equity in the case of an equity loan and based on the project's purchase price in the case of an acquisition loan, but such feasibility letter shall neither constitute a commitment to insure nor bind the Commissioner in any other manner.

(c) *Fee.* The Commissioner shall not charge a fee for undertaking a feasibility analysis or for the issuance of a feasibility letter.

§ 241.1015 Application and commitment fees.

(a) *Application.* An application for the issuance of either a conditional or firm commitment for insurance of an equity or acquisition loan on a project shall be submitted by an approved lender and by

the owner or purchaser of the project to the Commissioner on a form prescribed by the Commissioner. No application shall be considered unless the exhibits called for by such forms are furnished.

(b) *Application and commitment fees—(1) Application for conditional commitment.* An application commitment fee of \$2.00 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(2) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application-commitment fee in an amount which, when added to any prior fee received in connection with a conditional commitment application, will aggregate \$3.00 per thousand dollars of the loan applied for.

§ 241.1020 Commitments.

(a) *Conditional commitment.* The issuance of a conditional commitment constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

(b) *Firm Commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the equity or acquisition loan will be insured. The firm commitment may provide for the insurance of advances of equity or acquisition loan immediately upon endorsement of the note.

(c) *Term of commitment.* (1) A conditional commitment is effective for whatever term is specified in the text of the commitment.

(2) A firm commitment is effective for whatever term is specified in the text of the commitment.

(3) The term of either a conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 241.1025 Refund of fees.

If the amount of the commitment issued is less than the amount applied

for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment and reopening fees may also be refunded to the applicant, in whole or in part, in such other instances as the Commissioner may determine.

§ 241.1030 Mortgage insurance premiums.

The lender, upon endorsement of the note, shall pay the Commissioner a first mortgage insurance premium equal to 0.5 percent of the original face amount of the equity or acquisition loan.

(a) If the date of the first principal payment is more than one year following the date of endorsement, the lender upon each anniversary of such endorsement date, shall pay a premium equal to 0.5 percent of the original face amount of the loan. On the date of the first principal payment, the lender shall pay another premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the following year which shall be adjusted so as to accord with such date and so that the aggregate of said premiums shall equal the sum of:

(1) 0.5 percent of the average outstanding principal obligation of the loan for the year following the date of endorsement; and

(2) 0.5 percent per annum of the average outstanding principal obligation of the loan for the period from the first anniversary of the date of endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year or less than one year following the date of endorsement, the lender, upon such first principal payment date, shall pay a second premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) 0.5 percent per annum of the average outstanding principal obligation of the loan for the period from the date of endorsement to the date of the first principal payment; and

(2) 0.5 percent of the average outstanding principal obligation of the loan for the year following the date of the first payment following the date of the first principal payment.

(c) Until the equity or acquisition loan is paid in full or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender on each anniversary date of the first principal payment, shall pay an annual insurance premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the year following the date on which such premium becomes payable.

(d) The premiums payable on or after the date of the first principal payment shall be calculated in accordance with the amortizing provisions without taking into account delinquent payments or prepayments.

(e) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in subpart E of this part.

§ 241.1035 Charges by lender.

(a) The lender may collect from the borrower the amount of the fees provided for by subpart E of this part.

(b) The lender may also collect from the borrower an initial service charge, as reimbursement for the cost of closing the transaction, in an amount not to exceed 2 percent of the original principal amount of the loan.

(c) Any charges to be collected by the lender in addition to those prescribed in paragraphs (a) and (b) of this section, shall be subject to the prior approval of the Commissioner.

§ 241.1040 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in § 203.4 or § 203.6 of this chapter are eligible for insurance of equity or acquisition loans under subpart E of this part.

§ 241.1045 Note and security form.

The lender shall present for insurance a note and security instrument on forms approved by the Commissioner for use in the jurisdiction in which the property is located, which shall not be changed without the prior approval of the Commissioner. The security instrument shall provide for accelerated repayment at the request of the Commissioner pursuant to § 241.1046(b).

§ 241.1046 Rental assistance.

(a) When underwriting an equity or acquisition loan under subpart E of this part, the Commissioner may assume that the rental assistance provided in accordance with a plan of action

approved under subparts B or C of part 248 of this chapter will be extended for the full term of the contract entered into under the plan of action.

(b) In the event that rental assistance is not extended under part 248 of this chapter, or the Commissioner is unable to develop a revised package of incentives to the owner comparable to those received under the original approved plan of action, the Commissioner may require the mortgagee to accelerate the debt of the equity or acquisition loan.

(c) If the Commissioner is unable to extend the term of rental assistance for the full term of the contract entered into under part 248 of this chapter, the Commissioner is authorized to take such actions as the Commissioner deems appropriate to avoid default, avoid disruption of the sound ownership and management of the property or otherwise minimize the cost to the Federal Government.

§ 241.1050 Method of loan payment.

The loan shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with the amortization plan as agreed upon by the borrower, the lender, and the Commissioner.

§ 241.1055 Date of first payment to principal.

The date for first payment to principal shall be established by the Commissioner.

§ 241.1060 Maturity.

Acquisition loans and equity loans insured under subpart E of this part shall have a maturity equal to the remaining term of the first insured mortgage, or 20 years, whichever is longer.

§ 241.1065 Maximum loan amount—loans insured in connection with a plan of action under subpart C of part 248 of this chapter.

The amount of the equity loan shall not exceed ninety percent of the owner's equity in the project, as determined by the Commissioner. Notwithstanding the above, the equity loan shall not exceed an amount which, when added to the existing indebtedness on the property, can be supported by 90 percent of the projected net operating income of the project, as determined by the Commissioner. The Commissioner, in making a determination regarding the amount of an equity loan and sums available to service said loan, shall take into account the fact that the project's income may increase within the limits established by § 248.233(d) of this chapter.

§ 241.1067 Maximum loan amount—loans insured in connection with a plan of action under subpart B of part 248 of this chapter.

(a) The amount of the equity loan shall not exceed the lesser of 70 percent of the extension preservation equity of the project or the amount the Commissioner determines can be supported by the project on the basis of an 8 percent return on extension preservation equity, assuming normal debt service coverage.

(b) The amount of the acquisition loan shall not exceed 95 percent of the transfer preservation equity of the project, except that, if the purchaser is a priority purchaser, the loan may include any expenses associated with the acquisition, loan closing, and implementation of the plan of action, subject to the approval of the Commissioner.

(c) The owner or purchaser may receive an equity or acquisition loan pursuant to subpart E of this part in combination with a rehabilitation loan insured under subpart A of this part, subject to the approval of the Commissioner.

§ 241.1069 Escrow requirements.

(a) An equity loan provided in connection with a plan of action under subpart B of part 248 of this chapter shall provide for the lender to deposit, on behalf of the borrower, 10 percent of the loan amount in an escrow account, controlled by the Commissioner or a State housing finance agency approved by the Commissioner, which shall be made available to the borrower upon the expiration of the 5-year period beginning on the date the loan is made, subject to compliance with § 248.147 of this chapter.

(b) An equity loan provided in connection with a plan of action under either subpart B or subpart C of part 248 of this chapter shall provide for the lender to phase in advances to reflect project rent levels.

§ 241.1070 Agreed interest rate.

The equity or acquisition loan shall bear interest at the rate agreed upon by the borrower and the lender.

§ 241.1080 Eligibility of title.

In order for the project to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 241.1085 Title evidence.

(a) Upon insurance of the loan, the lender shall furnish to the Commissioner a policy of title insurance as provided in paragraph (a)(1) of this section. If the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender shall furnish such evidence of title as provided in paragraphs (a)(2), (3) or (4) of this section as the Commissioner may require. Any policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The acceptable types of title evidence are:

(1) A policy of title insurance issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L.I.C. Standard Mortgage Form," or such other form as may be approved by the Commissioner; shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured; and shall become an owner's policy, running to the lender as owner upon its acquisition of the property in extinguishment of the debt, and to the Secretary as owner upon his acquisition of the property pursuant to the loan insurance contract;

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles;

(3) A Torrens or similar title certification; or

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

§ 241.1090 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date the next annual insurance premium payable by the lender to the Commissioner. These payments shall continue only as long as the contract of insurance remains in effect.

§ 241.1095 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and the aggregate amount shall be paid by the borrower upon each monthly payment date in a single

payment. The lender shall apply the payment in the following order:

(1) Premium charges under the contract of insurance;

(2) Interest on the loan; and

(3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any monthly payments required under paragraph (a) of this section shall constitute a default. The security instrument shall provide for a grace period of 30 days within which time the default must be cured.

§ 241.1100 Prepayment privilege and charges.

(a) *Prepayment privilege.* (1) Except as otherwise provided in paragraph (b) of this section, the security instrument shall contain a provision permitting the borrower to prepay the loan, in whole or in part, upon any interest payment date after giving to the lender 30 days advance notice of its intention to prepay.

(2) If the loan exceeds \$200,000, the security instrument may contain a provision for an additional charge in the event of prepayment of principal as may be agreed upon between the borrower and lender. These charges shall not be imposed if the loan is accelerated at the request of the Commissioner, pursuant to § 241.1046(b). The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without any additional charge. A provision for an additional charge in the event of prepayment may not be included in a loan of \$200,000 or less.

(b) *Prepayment of bond-financed loan.* Where the lender has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the loan may contain a prepayment restriction and prepayment penalty charges acceptable to the Commissioner as to term, amount, and conditions.

§ 241.1105 Late charges.

The note and security instrument may provide for the lender's collection of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

§ 241.1120 Mortgagee's consent.

The holder of an insured mortgage which is recorded prior to the equity or acquisition loan shall not withhold its

consent to the equity or acquisition loan (whether or not such equity or acquisition loan is insured by the Commissioner) or the security instrument executed in connection therewith, and may not charge a fee as a condition to its consent to such loan or security instrument.

Subpart F—Insurance for Equity Loans and Acquisition Loans—Contract Rights and Obligations**§ 241.1200 Cross-references.**

(a) *Projects with a HUD-insured or HUD-held mortgage.* (1) All the provisions of part 207, subpart B of this chapter, covering mortgages insured under section 207 of the Act, apply to equity loans or acquisition loans on a project insured under section 241(f) of the Act, except the following provisions:

Sec.

207.251 Definitions.

207.252 First, second and third premium.

207.252a Premiums—operating loss loans.

207.252b Premiums—mortgages insured pursuant to section 223(f) of the Act.

207.252c Premiums—mortgages insured pursuant to section 238(c) of the Act.

207.254 Insurance endorsement.

(2) For the purposes of subpart F of this part, all references in part 207 of this chapter to section 207 of the Act and to the term "mortgage" shall be construed to refer to section 241(f) of the Act and "equity or acquisition loan," respectively.

(b) *Projects without a HUD-insured or HUD-held mortgage.* The provisions of subpart D of this part shall be applicable to a project without a HUD-insured or HUD-held mortgage that is receiving an equity loan or acquisition loan under subpart E of this part in connection with a plan of action approved by the Commissioner under part 248 of this chapter.

(c) All of the definitions in § 241.1005 apply to subpart F of this part. In addition, as used in subpart F of this part, the term "contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of subpart F of this part and of the Act.

§ 241.1205 Payment of insurance benefits.

All the provisions of § 207.259 of this chapter relating to insurance benefits shall apply to an equity or acquisition loan insured under subpart F of this part, except that insurance benefits shall be payable in cash if the insurance benefits under the senior insured mortgage are payable in cash, unless the lender files a written request for payment in debentures. If such a request

is made, payment shall be made in debentures with a cash payment to adjust for any difference between the total amount of the insurance payment and the amount of the debentures issued.

§ 241.1210 Condition for payment of insurance benefits.

(a) All of the provisions of § 207.258 of this chapter apply to subpart F of this part, except that, if the holder of the senior insured mortgage institutes a foreclosure action, the lender shall notify the Commissioner in a timely manner of such action. The Commissioner, at its option, may then direct the lender to assign the equity or acquisition loan to the Commissioner, or bid an amount necessary to acquire the project and convey the project to the Commissioner.

(b) If the equity loan or acquisition loan is assigned in accordance with this section, the Commissioner at a foreclosure sale may bid, in addition to amounts otherwise authorized, any sum not in excess of the aggregate unpaid indebtedness secured by the senior insured mortgage and equity or acquisition loan, plus taxes, insurance, foreclosure costs, fees and other expenses.

§ 241.1215 Calculation of insurance benefits.

All of the provisions of § 207.259 of this chapter apply to subpart F of this part, except that if the lender, at the direction of the Commissioner, acquires title to the project at a foreclosure sale instituted by the holder of the senior insured mortgage, the amount of the claim determined under § 207.259(c) of this chapter shall also include an amount bid by the lender to satisfy the senior insured mortgage at the foreclosure sale.

§ 241.1220 Termination of insurance benefits.

All of the provisions of § 207.253a of this chapter apply to subpart F of this part, except that the following shall also constitute grounds for terminating the contract of insurance:

(a) The failure of the lender to notify the Commissioner in a timely manner of a foreclosure action initiated by the holder of the senior insured mortgage; and

(b) The failure of the lender when directed by the Commissioner to assign the equity or acquisition loan or bid an amount necessary to acquire title to the project and convey the project to the Commissioner, in accordance with § 241.1210.

§ 241.1230 No vested right in fund.

Neither the lender nor the borrower shall have any vested or other right in the insurance fund under which the loan is insured.

§ 241.1235 Cross default.

In the event the borrower commits a default under a prior recorded insured mortgage and the holder thereof initiates a foreclosure proceeding, said default under the prior recorded insured mortgage shall constitute a default under the equity or acquisition loan.

§ 241.1245 Insurance endorsement.

(a) *Endorsement.* The Commissioner shall indicate his insurance of the equity loan or acquisition loan by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the loan is insured and the date of the insurance.

(b) *Endorsement of phased loan.* In the event the loan is phased, the Commissioner shall indicate his insurance of each amount by endorsing the original credit instrument and identifying the section of the Act and the regulations under which such amount is insured and the date of the insurance.

(c) *Final advance of phased loan.* When all advances of a phased loan have been made and the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, the Commissioner shall indicate on the original credit instrument the total of all advances the Commissioner has approved for insurance and again endorse such instrument.

§ 241.1250 Effect of endorsement.

From the date that the equity or acquisition loan is endorsed, the Commissioner and the lender shall be bound by the provisions of subpart F of this part to the same extent as if they had executed a contract including the provisions of subpart F of this part and the applicable sections of the Act.

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

14. The authority citation for part 248 is revised to read as follows:

Authority: 12 U.S.C. 1715 *et seq.*, 42 U.S.C. 3535(d).

15. In chapter II, part 248, subpart A is revised, subpart B is redesignated as subpart C, and a new subpart B (consisting of §§ 248.101 through 248.183) is added to read as follows:

Subpart A—General

Sec.

- 248.1 Purpose.
- 248.3 Applicability.
- 248.5 Election to proceed under subpart B or subpart C of this part.
- 248.7 Waivers.

Subpart B—Prepayments and Plans of Action Under the Low Income Housing Preservation and Resident Homeownership Act of 1990

Sec.

- 248.101 Definitions.
- 248.103 General prepayment limitation.
- 248.105 Notice of intent.
- 248.111 Appraisal and preservation value of eligible low income housing.
- 248.121 Annual authorized return and aggregate preservation rents.
- 248.123 Determination of Federal cost limit.
- 248.127 Limitations on action pursuant to Federal cost limit.
- 248.131 Information from the Commissioner.
- 248.133 Second notice of intent.
- 248.135 Plans of action.
- 248.141 Criteria for approval of a plan of action involving prepayment and voluntary termination.
- 248.145 Criteria for approval of a plan of action involving incentives.
- 248.147 Housing standards.
- 248.149 Timetable for approval of a plan of action.
- 248.153 Incentives to extend low income use.
- 248.157 Voluntary sale of housing not in excess of Federal cost limit.
- 248.161 Mandatory sale of housing in excess of the Federal cost limit.
- 248.165 Assistance for displaced tenants.
- 248.169 Permissible prepayment or voluntary termination and modification of commitments.
- 248.173 Resident homeownership program.
- 248.175 Resident homeownership program—limited equity cooperative.
- 248.177 Delegated responsibility to state agencies.
- 248.179 Consultation with other interested parties.
- 248.181 Notice to tenants.
- 248.183 Preemption of State and local laws.

Subpart A—General

§ 248.1 Purpose.

The purpose of this part is to—

(a) Preserve and retain to the maximum extent practicable as housing affordable to low income families or persons those privately owned dwelling units that were produced for such purpose with Federal assistance, without unduly restricting the owners' prepayment rights;

(b) Minimize the involuntary displacement of tenants currently residing in such housing;

(c) Work in partnership with State and local government and the private sector in the provision and operation of

housing that is affordable to very low, low and moderate income families; and

(d) Facilitate the sale of housing to residents under a resident homeownership program.

§ 248.3 Applicability.

The requirements of subparts B and C of this part apply to any project that is eligible low income housing, as defined in subparts B and C of this part respectively, on or after November 1, 1987, except that such requirements shall not apply to a project which receives assistance under title IV, subtitle B of the Cranston-Gonzalez National Affordable Housing Act in connection with a homeownership program approved by the Commissioner thereunder.

§ 248.5 Election to proceed under subpart B or subpart C of this part.

(a) Any owner who has not submitted a notice of intent prior to January 1, 1991, pursuant to either § 248.211 or § 248.105, shall proceed under subpart B of this part.

(b) Any owner who has filed a plan of action with the Commissioner on or before October 11, 1990 pursuant to subpart C of this part, regardless of whether or not the Commissioner has approved such plan of action or whether the owner has received incentives thereunder, may proceed under subpart B of this part by submitting a notice of intent to the Commissioner in accordance with § 248.105 within 30 days after publication of revised Appraisal Guidelines or within thirty days after the Commissioner notifies the owner of HUD's final approval of the plan of action, whichever is later. The notice of intent shall state that the owner is exercising its conversion right pursuant to this section. If the owner fails to file a notice of intent within that period, the owner forfeits its right of conversion. In awarding incentives to an owner who elects to proceed under subpart B of this part in accordance with this section, the Commissioner shall take into consideration any incentives which the owner has already received under subpart C of this part.

(c) Any owner of housing that becomes eligible low income housing, as defined in subpart B of this part, before January 1, 1991, and who before such date, filed a notice of intent under § 248.211 of subpart C of this part, may, unless a plan of action was submitted after October 11, 1990, elect to proceed under subpart B or under subpart C of this part. An owner must indicate its election by submitting to the

Commissioner, within 30 days of the effective date of this part, a notice of election to proceed indicating whether it wishes to proceed under subpart B or subpart C of this part, or proceed under subpart B of this part until completion of the appraisals and then elect either subpart B or subpart C of this part. An owner who chooses to retain its option until after the completion of the appraisals under § 248.111 must submit a new notice of intent to the Commissioner within 30 days after receipt of the information provided by the Commissioner under § 248.131. The notice of intent shall be submitted in accordance with either § 248.105 (for owners electing to proceed under subpart B of this part) or § 248.211 (for owners electing to proceed under subpart C of this part). Any owner who fails to file a notice of intent within the 30-day period may not proceed under subpart C of this part, but may proceed under subpart B of this part by filing a new notice of intent thereafter. If an owner who has filed a notice of intent before January 1, 1991 elects under this paragraph to proceed under subpart C of this part, it may change its election within 30 days after receipt of the information provided by the Commissioner under § 248.131 by filing a new notice of intent under § 248.211. For purposes of calculating any time periods or deadlines under this part for actions following the filing of the notice of intent, the date on which the owner submits the new notice of intent under this paragraph shall be deemed the date of the filing of the notice of intent. Any owner who, exercising its option under paragraph (c) of this section, submits a notice of intent under § 248.211 after the Commissioner has incurred the cost of having an appraisal, or appraisals, performed pursuant to § 248.111 of subpart A of this part, shall reimburse the Commissioner for these expenses within 30 days of receipt of a bill covering these expenses.

(d) An owner who has filed a plan of action after October 11, 1990, pursuant to § 248.213, may not elect to proceed under subpart B of this part.

§ 248.7 Waivers.

Upon making a determination and finding of good cause, the Commissioner may waive any provision of this part, subject to statutory limitations. Each waiver shall be in writing and shall be supported by documentation of the facts and reasons which form the basis for the waiver.

Subpart B—Prepayments and Plans of Action under the Low Income Housing Preservation and Resident Homeownership Act of 1990

§ 248.101 Definitions.

Acquisition Loan. A loan or advance of credit made to a qualified purchaser of eligible low income housing and insured by the Commissioner under part 241, subpart E of this chapter.

Adjusted Income. Annual income, as specified in § 813.106 of this title, less allowances specified in the definition of "Adjusted Income" in § 813.102 of this title.

Aggregate Preservation Rent. The extension preservation rent or transfer preservation rent, as defined under this section.

Annual Authorized Return. That amount an owner of an eligible low income housing project may receive in distributions from the project each year, plus debt service payments payable each year attributable to the equity take-out portion of any loan approved under the plan of action, expressed as a percentage of the project's extension preservation equity.

Bona Fide Offer. A certain and unambiguous offer to purchase an eligible low income housing project pursuant to subpart B of this part made in good faith by a qualified purchaser with the intent that such offer result in the execution of an enforceable, valid and binding contract. A bona fide offer shall include, for purposes of subpart B of this part, a contract of sale and an earnest money deposit, as set forth in § 248.157(g). For mandatory sales under § 248.161, the offer must include a contract of sale, an earnest money deposit and also be for a purchase price which equals the transfer preservation value.

Capital Improvement Loan. A direct loan originated by the Commissioner under part 219, subpart C of this chapter.

Community-Based Nonprofit Organization. A private nonprofit organization that—

- (1) Is organized under State or local laws;
- (2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- (3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization.
- (4) Has applied for, or has a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue Code of 1986;
- (5) Does not include a public body (including the participating jurisdiction)

or an instrumentality of a public body. An organization that is State or locally chartered may qualify as a community-based nonprofit organization; however, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members can be public officials;

(6) Has standards of financial accountability that conform to Attachment F of OMB Circular No. A-110 (Rev.) "Standards for Financial Management Systems";

(7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(8) Maintains accountability to low income community residents by—

(i) Maintaining at least one-third of its governing board's membership for low income neighborhood residents, other low-income community residents, or elected representatives of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county, or metropolitan area; for rural areas, it may be neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State), provided the governing board contains low-income residents from each county of the multi-county area; and

(ii) Providing a formal process for low-income, program beneficiaries to advise the organization on its decisions regarding the acquisition, rehabilitation and management of affordable housing.

Default. For purposes of § 248.105(a), the failure of the owner to make any payment due under the mortgage (including the full amount of the debt if the mortgagee has accelerated the debt on the basis of a non-monetary default) within 30 days after such payment becomes due.

Eligible Low Income Housing. Any project that is not subject to a use restriction imposed by the Commissioner that restricts the project to low and moderate income use for a period at least equal to the remaining term of the mortgage, and that is financed by a loan or mortgage—

(1) That is—

(i) Insured or held by the Commissioner under section 221(d)(3) of the National Housing Act and assisted under part 215 of this chapter or project-based assistance under parts 880, 881 or 886 of this title;

(ii) Insured or held by the Commissioner under part 221 of this

chapter and bearing a below market interest rate as provided under § 221.518(b) of this chapter;

(iii) Insured, assisted, or held by the Commissioner or a State or State agency under part 236 of this chapter; or

(iv) A purchase money mortgage held by the Commissioner with respect to a project which, immediately prior to HUD's acquisition, would have been classified under paragraphs (1)(i), (ii), or (iii) of this definition; and

(2) That, under regulation or contract in effect before February 5, 1988, is or will within 24 months become eligible for prepayment without prior approval of the Commissioner.

Equity Loan. A loan or advance of credit to the owner of eligible low income housing and insured by the Commissioner under part 241, subpart E of this chapter.

Extension Preservation Equity. The extension preservation equity of a project is:

(1) The extension preservation value of the project determined under § 248.111; less

(2) The outstanding balance of any debt secured by the property.

Extension Preservation Rent. The extension preservation rent is the gross potential income for the project that would be required to support:

(1) The annual authorized return;

(2) Debt service on any rehabilitation loan for the project;

(3) Debt service on the federally-assisted mortgage(s) for the project;

(4) Project operating expenses; and

(5) Adequate reserves.

Extension Preservation Value. The fair market value of the project based on the highest and best use of the project as multifamily market-rate rental housing.

Fair market rent. The section 8 existing fair market rent published for effect and as defined under § 882.102 of this title, applicable to the jurisdiction in which the project is located, with adjustments, where appropriate, for projects in which tenants pay their own utilities. (No utility adjustments will be made to the fair market rent for purposes of determining the Federal cost limit.)

Federal Cost Limit. The greater of 120 percent of the section 8 existing fair market rent for the market area in which the project is located or 120 percent of the prevailing rents in the relevant local market area in which the project is located.

Federally-assisted Mortgage. Any mortgage as defined in this section, any insured operating loss loan secured by the project and any loan insured by the Commissioner under part 241 of this chapter.

Good Cause. With respect to displacement, the temporary or permanent uninhabitability of the project justifying relocation of all or some of the project's tenants (except where such uninhabitability is caused by the actions or inaction of the owner), or actions of the tenant that, under the terms of the tenant's lease and applicable regulations, constitute a basis for eviction.

HOME Investment Trust Fund. A public fund established in the general local or State government in which a project is located pursuant to title II of the Cranston-Gonzalez National Affordable Housing Act.

Homeownership Program. A program developed by a resident council for the sale of an eligible low income housing project to the tenants in accordance with the standards in § 248.173 or § 248.175.

Interest Reduction Payments.

Payments made by the Commissioner pursuant to a contract to reduce the interest costs on a mortgage insured under part 236 of this chapter, as provided under subpart C of part 236 of this chapter.

Limited Equity Cooperative. A tenant cooperative corporation which, in a manner acceptable to the Secretary, restricts the initial and resale price of the shares of stock in the cooperative corporation so that the shares remain affordable to low income families and moderate income families.

Low Income Affordability Restrictions. Limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility with respect to eligible low income housing.

Low Income Families. Families or persons whose incomes do not exceed the levels established for low income families under part 813 of this title.

Low Vacancy Area. A market area in which the current supply of decent, safe and sanitary, vacant, available rental units, as a proportion of the total overall rental inventory in the area is not sufficient to allow for normal growth and mobility, taking into account the need for vacancies resulting from turnover and to meet growth in renter households. The determination of a low vacancy area, as set forth in § 248.165(h), will be made by the Commissioner, utilizing the most recent available data for the market area on the rental inventory, renter households, rental vacancy rates and other factors as appropriate.

Moderate Income Families. Families or persons whose incomes are between 80 percent and 95 percent of median

area income, as determined by the Commissioner, with adjustments for smaller and larger families.

Mortgage. The mortgage or deed of trust insured or held by the Commissioner or a State or State agency under parts 221 or 236 of this title or the purchase money mortgage taken back by the Commissioner in connection with the sale of a HUD-owned project and held by the Commissioner, where such mortgage, deed or trust or purchase money mortgage is secured by eligible low income housing.

Nonprofit Organization. Any private, nonprofit organization or association that—

(1) Is incorporated under State or local law;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Complies with standards of financial accountability acceptable to the Commissioner; and

(4) Has among its principal purposes significant activities related to the provision of decent housing that is affordable to very low, low, and moderate income families.

Notice of Intent. An owner's notification to the Commissioner of its intention to terminate the low income affordability restrictions on the project through prepayment of the mortgage or voluntary termination of the insurance contract, to extend the low income affordability restrictions on the project, or to transfer the project to a qualified purchaser.

Owner. The mortgagor or trustor under the mortgage secured by eligible low income housing.

Participating Jurisdiction. For purposes of the resident homeownership program established in § 248.173, any State or unit of general local government that has been so designated in accordance with section 216 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. 12746).

Plan of Action. A plan providing for the termination of the low income affordability restrictions on the project through prepayment of the mortgage or voluntary termination of the insurance contract, for extension of the low income affordability restrictions on the project, or for the transfer of the project to a qualified purchaser. A homeownership program constitutes a plan of action for purposes of subpart B of this part.

Prepayment. Prepayment in full of a mortgage, or a partial prepayment or series of partial prepayments that reduces the mortgage term by at least six months, except where the prepayment in full or partial prepayment results from

the application of condemnation proceeds.

Preservation Equity. The extension preservation equity or transfer preservation equity, as defined under this section.

Preservation Value. The extension preservation value or transfer preservation value, as defined under this section.

Priority Purchaser. Any entity that is not a related party to the owner and that is either—

(1) A resident council organized to acquire the project in accordance with a resident homeownership program that meets the requirements of subpart B of this part; or

(2) Any nonprofit organization or State or local agency that agrees to maintain low income affordability restrictions for the remaining useful life of the project. A nonprofit organization or State or local agency that is affiliated with a for-profit entity for purposes of purchasing a project under subpart B of this part shall not be considered a priority purchaser.

Public Housing Agency. A public housing agency, as defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

Qualified Purchaser. Any entity that is not a related party to the owner and that agrees to maintain low income affordability restrictions for the remaining useful life of the project, and includes for-profit entities and priority purchasers.

Regulatory Agreement. The agreement executed by the owner and the Commissioner or a State agency providing for the regulation of the operation of the project.

Related Party. An entity that, either directly or indirectly, is wholly or partially owned or controlled by the owner of the project being transferred under subpart B of this part, is under whole or partial common control with such owner, or has any financial interest in such owner or in which such owner has any financial interest. However, this shall not prohibit a nonprofit organization from buying out the interest of its limited dividend or for-profit partners in connection with the sale of eligible low income housing under subpart B of this part, as long as the sale is made on an arm's length basis and the partners who sell their interest completely divest themselves of any input in the continued operation of the project. The purchaser and the owner shall not be deemed related parties on the basis that financing is provided to the purchaser by the seller, or a management company affiliated with the seller, as long as:

(1) Only a loan, and not a grant, is provided;

(2) The financing is provided for the acquisition of the project, the rehabilitation of the project, or both;

(3) In the case of financing for the acquisition of the project, the sum of the principal amount of the loan, plus the amount of the acquisition loan under section 241(f) of the National Housing Act (12 U.S.C. 1715z-6(f)), and any Federal grant to cover acquisition of the project, does not exceed the sum of the sales price and the expenses associated with the acquisition, loan closing and implementation of the plan of action; and in the case of financing for the rehabilitation of the project, the principal amount of the loan does not exceed the equity requirements applicable to the rehabilitation loan or capital improvement loan obtained by the purchaser under part 241 or part 219 of this chapter;

(4) The loan is not a condition of accepting a bona fide offer or entering into a sales contract;

(5) The seller has no input in the continued operation of the project as a result of the loan; and

(6) In the case of a loan provided by a management company that is affiliated with the seller, the execution of a management contract between the purchaser and the management company is not a condition of the loan. This rule does not bar an owner, or former owner, from membership on a nonprofit organization's board of directors, as long as the owner, or former owner, participates only in his or her personal capacity, without compensation, and holds a nonvoting membership. The purchaser and the owner shall not be deemed related parties solely by reason of the purchaser's retention of a property management entity of a company that is owned or controlled by the owner or a principal thereof, if retention of the management company is neither a condition of sale nor part of consideration paid for the project and the property management contract is negotiated by the qualified purchaser on an arm's length basis.

Relevant Local Market. An area geographically smaller than the market area established by the Commissioner for purposes of determining the section 8 existing fair market rent, that is identifiable as a distinct rental market area in which similar projects and units would effectively compete with the subject project, for potential tenants.

Relocation Expenses. Relocation expenses shall consist of payment for—

(1) Advisory services, including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act (42 U.S.C. 3601-3619)), and referrals to suitable, affordable, decent, safe and sanitary alternative housing; and

(2) Payment for actual, reasonable moving expenses.

Remaining Useful Life. With respect to eligible low income housing, the period during which the physical characteristics of the project remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

Reserve for Replacements. The escrow fund established under the regulatory agreement for the purpose of ensuring the availability of funds for needed repair and replacement costs.

Resident Council. Any incorporated nonprofit organization or association in which membership is available to all the tenants, and only the tenants, of a particular project and—

(1) Is representative of the residents of the project;

(2) Adopts written procedures providing for the election of officers on a regular basis; and

(3) Has a democratically elected governing board, elected by the residents of the project.

Residual Receipt Fund. The fund established under the regulatory agreement for holding cash remaining after deducting from the surplus cash, as defined by the regulatory agreement, the amount of all allowable distributions.

Return on Investment. The amount of allowable distributions that a purchaser of a project may receive under a plan of action under § 248.157 or § 248.161.

Section 8 Assistance. Assistance provided under parts 880 through 887 of this title.

Special Needs Tenants. Those "elderly persons," 62 years of age or older, "elderly families," or families that include "disabled persons," as such terms are defined in § 812.2 of this title, or large families of five or more persons and requiring units with three or more bedrooms.

State assisted or subsidized mortgage. A mortgage which is assisted or subsidized by an agency of a State government without any Federal mortgage subsidy.

Tenant Representative. A designated officer of an organization of the project's tenants, a tenant who has been elected to represent the tenants of the project with respect to subpart B of this part, or a person or organization that has been formally designated or retained by an

organization of the project's tenants to represent the tenants with respect to subpart B of this part.

Termination of Low Income Affordability Restrictions. The elimination of low income affordability restrictions under the regulatory agreement through termination of mortgage insurance or prepayment of the mortgage.

Transfer Preservation Equity. The transfer preservation equity of a project is:

(1) The transfer preservation value of the project determined under § 248.111; less

(2) The outstanding balance of the federally-assisted mortgage(s) for the project.

Transfer Preservation Rent. For purposes of receiving incentives pursuant to a sale of the project, transfer preservation rent shall be the gross income for the project that would be required to support:

(1) Debt service on the loan for acquisition of the project;

(2) Debt service on any rehabilitation loan for the project;

(3) Debt service on the federally-assisted mortgage(s) for the housing;

(4) Project operating expenses; and

(5) Adequate reserves.

Transfer Preservation Value. The fair market value of the project based on its highest and best use.

Very Low Income Families. Families or persons whose incomes do not exceed the level established for very low income families under § 813.102 of this title.

Voluntary Termination of Mortgage Insurance. The termination of all rights under the mortgage insurance contract and of all obligations to pay future insurance premiums.

§ 248.103 General prepayment limitation.

(a) **Prepayment.** An owner of eligible low income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such project only in accordance with a plan of action approved by the Commissioner.

(b) **Termination.** A mortgage insurance contract with respect to eligible low income housing may be terminated pursuant to § 207.253 of this chapter only in accordance with a plan of action approved by the Commissioner.

(c) **Foreclosure.** A mortgagee of a mortgage insured by the Commissioner may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low income housing only if the mortgagee also conveys title to the project to the Commissioner in

connection with a claim for insurance benefits.

(d) **Effect of unauthorized prepayment.** A mortgagee's acceptance of a prepayment in violation of paragraph (a) of this section, or the voluntary termination of a mortgage insurance contract in violation of paragraph (b) of this section, shall be null and void and any low income affordability restrictions on the project shall continue to apply to the project.

(e) **Remedies for unauthorized prepayment.** A mortgagee's acceptance of a prepayment in violation of paragraph (a) of this section, or attempt to obtain voluntary termination of a mortgage insurance contract in violation of paragraph (b) of this section, is grounds for administrative action under parts 24 and 25 of this title, in addition to any other remedies available by law, including rescission of the prepayment or reinstatement of the insurance contract.

§ 248.105 Notice of intent.

(a) **Eligibility for filing.** An owner of eligible low income housing intending to prepay the mortgage or voluntarily terminate the mortgage insurance contract pursuant to § 248.141, extend the low income affordability restrictions of the housing in accordance with § 248.153, or transfer the housing to a qualified purchaser under § 248.157, may file a notice of intent unless the mortgage covering the project—

(1) Continued in default or fell into default on or after the November 28, 1990, and the mortgage has been assigned to the Commissioner as a result of such default;

(2) Continued in default or fell into default on or after November 28, 1990, while the mortgage was held by the Commissioner;

(3) Fell into default prior to November 28, 1990, if the owner entered into a workout agreement prior to that date, and on or after that date, the owner has defaulted under the workout agreement (and, if the agreement was with an insured mortgagee, the mortgage has been assigned to the Commissioner as a result of the default under the workout agreement); or

(4) Fell into default prior to November 28, 1990, but has been current since that date and the owner has not agreed to recompense the appropriate insurance fund for losses sustained by the fund as a result of any work-out or other arrangement agreed to by the Commissioner and the owner with respect to the defaulted mortgage.

(b) **Filing with the Commissioner.** The notice of intent shall be filed with the

HUD Field Office in whose jurisdiction the project is located. The notice of intent shall identify the project by name, project number and location. It shall contain a statement indicating whether the owner intends to extend the affordability restrictions on the project by retaining ownership of the project or transferring it to a qualified purchaser, or whether the owner intends to terminate the affordability restrictions on the project through prepayment of the mortgage or termination of the mortgage insurance contract. The notice of intent shall also request the tenants to notify the owner, the Commissioner, and the State or local officer identified in the notice of intent of any individual or organization that has been designated or retained by the tenants to represent the tenants with respect to the actions to be taken under subpart B of this part.

(c) *Filing with the State or local government and tenants.* The owner simultaneously shall file the notice of intent with the chief executive officer of the appropriate State or local government in which the project is located, or any officer designated by executive order or State or local law to receive such information, and with the mortgagee. In addition, the owner shall deliver a copy of the notice of intent to each occupied unit in the project and to any tenant representative, if any, known to the owner, and shall post a copy of the notice of intent in readily accessible locations within each affected building of the project. The copies of the notice of intent delivered to the tenants and the tenant representative shall include a summary of possible outcomes of the filing which shall be furnished by the Commissioner. Upon the request of any non-English speaking tenants residing in the affected project, the owner shall tabulate the number and type of translations needed by the tenants and request the local HUD field office to provide the appropriate translations. The owner shall deliver a copy of the translated notice of intent to all of the tenants who requested such translation. The failure of an owner to comply with any non-federal notice requirements shall not invalidate the notice of intent.

§ 248.111 Appraisal and preservation value of eligible low income housing.

(a) *Appraisal.* Upon receiving a notice of intent indicating an intent to extend the low income affordability restrictions under § 248.153 or transfer the project under § 248.157, the Commissioner shall provide for determination of the preservation values of the project pursuant to this section.

(b) *Notice.* Within 30 days after the filing of a notice of intent to extend the

income restrictions or to transfer the project, the Commissioner shall provide the owner with written notice of—

(1) The need for, and the rules and guidelines governing, an appraisal of the project;

(2) The filing deadline for submission of the appraisal;

(3) The need for an appraiser retained by the Commissioner to inspect the project and the project's financial records; and

(4) Any delegation to an appropriate State agency, if any, by the Commissioner of responsibilities regarding the performance of an appraisal pursuant to this section.

(c) *Appraisers.* The Commissioner and the owner shall each select and compensate an appraiser who shall:

(1) Neither be an employee of the Federal Government nor an employee or officer of any entity that is affiliated with the owner or the mortgagee of record;

(2) Be certified by the appropriate State agency under the standards established by the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1451-1459); and

(3) Have six years of experience in the appraisal profession and at least three years experience in the practice of appraising multifamily residential properties;

(4) Is not the subject of a charge issued following a reasonable cause determination under the Fair Housing Act (42 U.S.C. 3601-3619).

(d) *Guidelines.* The Commissioner shall provide to the owner and the appraiser retained by the Commissioner guidelines for the conduct of the appraisal. The guidelines established by the Commissioner shall be consistent with customary appraisal standards. The guidelines shall assume repayment of the existing federally-assisted mortgage(s), termination of the existing Federal low income affordability restrictions, and costs of compliance with any State or local laws of general applicability. The guidelines may permit reliance upon assessments of rehabilitation needs and other conversion costs determined by an appropriate State agency, as determined by the Commissioner.

(e) *Operating expenses.* For the purpose of determining preservation values, the guidelines shall instruct the appraiser to use the greater of actual project operating expenses at the time of the appraisal, based on the average of the actual project operating expenses during the preceding three years, or projected operating expenses after

conversion, as determined by the Commissioner. However, if the current year operating expenses are higher than those of the preceding three years and the Commissioner has made a determination that these costs are unlikely to decrease in the future, the appraiser shall use current year operating expenses rather than operating expenses for the preceding three years for purposes of comparison with projected operating expenses after conversion. Likewise, if the current year operating expenses are lower than those of the preceding years and the Commissioner has made a determination that these costs are unlikely to increase in the future, the appraiser shall use current year operating expenses rather than operating expenses for the preceding three years for purposes of comparison with projected expenses after conversion. Where the highest and best use of a project is not as rental housing, the appraiser shall use projected operating expenses assuming conversion of the project to its highest and best use.

(f) *Preservation values.* The preservation values will be determined on the basis of the appraisals conducted by the owner's and the Commissioner's independent appraisers. Each appraiser will determine both the extension preservation value and the transfer preservation value, regardless of the owner's intentions as indicated in the notice of intent.

(g) *Highest and best use as residential property.* In determining the extension preservation value of the project, the appraiser shall assume conversion of the project to market-rate rental housing. The appraiser shall, in accordance with the guidelines established by the Commissioner, determine the amount of rehabilitation expenditures, if any, that would be necessary to bring the project up to quality standards required to attract and sustain a market-rate tenancy upon conversion and assess other costs that the owner could reasonably be expected to incur if the owner converted the property to market-rate multifamily rental housing.

(h) *Highest and best use.* In determining the transfer preservation value for the project, the appraiser shall assume conversion of the project to highest and best use for the property, and shall, in accordance with the guidelines established by the Commissioner, determine the amount of any rehabilitation expenditures, including demolition, that would be necessary to convert the project to such use and assess other costs that the

owner could reasonably be expected to incur if the owner converted the property to its highest and best use.

(i) *Submission of appraisal.* Within four months after the filing of the notice of intent:

(1) The owner shall submit to the HUD Field Office in whose jurisdiction the project is located, the appraisal made by the owner's selected appraiser; and

(2) The Commissioner's selected appraiser shall conduct and submit an appraisal to the Commissioner.

(j) *Joint determination of preservation values.* No later than one month after the owner and the Commissioner exchange appraisals, the owner and the Commissioner shall, on the basis of the appraisals delivered to them, agree on the preservation values of the project. If no agreement as to preservation values can be reached, the owner and the Commissioner shall jointly select a third appraiser meeting the qualifications set forth in paragraph (c) of this section by the end of six months from the date that the notice of intent was filed. The cost of this third appraisal shall be borne equally by both parties. The third appraiser must comply with the guidelines set forth in paragraph (d) of this section and must conduct the appraisal and submit an appraisal within two months after accepting the assignment. The determination by the third appraiser of the project's preservation values shall be binding on both the owner and the Commissioner.

(k) *Timeliness of appraisals.* The Commissioner may approve a plan of action to receive incentives under §§ 248.153, 248.157 or 248.161 only based upon an appraisal conducted in accordance with this section that is not more than 30 months old, unless the failure of the Commissioner to approve the plan of action within the 30-month period was due to circumstances beyond the control of the owner.

§ 248.121 Annual authorized return and aggregate preservation rents.

(a) *Annual authorized return.* For each eligible low income housing project appraised under § 248.111, the Commissioner shall set an annual authorized return on the project equal to 8 percent of the extension preservation equity.

(b) *Aggregate preservation rents.* For each eligible low income housing project appraised under § 248.111, the Commissioner shall also determine the aggregate preservation rents. The aggregate preservation rents shall be used solely for the purposes of comparison with the Federal cost limit under § 248.123. Actual rents received by the owner (or a qualified purchaser)

shall be determined pursuant to §§ 248.153, 248.157, and 248.161.

(c) *Extension preservation rent.* The extension preservation rent shall be the gross potential income for the project, as determined by the Commissioner, that would be required to support—

(1) The annual authorized return determined under paragraph (a) of this section;

(2) Debt service on any rehabilitation loan for the project, assuming a market rate of interest and customary terms;

(3) Debt service on the federally-assisted mortgage(s) for the project;

(4) Project operating expenses as determined by the Commissioner; and

(5) Adequate reserves.

(d) *Transfer preservation rent.* The transfer preservation rent shall be the gross potential income for the project, as determined by the Commissioner, that would be required to support—

(1) Debt service on the loan for acquisition of the project;

(2) Debt service on any rehabilitation loan for the project, assuming a market rate of interest and customary terms;

(3) Debt service on the federally-assisted mortgage(s) for the project;

(4) Project operating expenses as determined by the Commissioner; and

(5) Adequate reserves.

(e) *Adequate reserves and operating expenses.* For purposes of this section—

(1) Adequate reserves are the amount of funds which, when added to existing reserves, are sufficient to maintain the project, including needed deferred maintenance, at a level that meets the standards set forth in § 248.147; and

(2) Project operating expenses shall be based on operating expenses for the preceding 3 years, adjusted for reasonable reductions in operating costs due to rehabilitation and energy improvements. For purposes of comparison to the gross rents used in determining the Federal cost limit, project operating expenses shall include the cost of utilities paid by the residents.

(f) *Debt service.* For purposes of this section, the amount of debt service for an acquisition loan will be estimated based on the maximum loan to which the purchaser is entitled under § 241.1067 of this chapter. The debt service on any rehabilitation loan will be estimated using costs derived from the appraisals conducted under § 248.111, taking into account any funds provided for rehabilitation by State or local governments and assuming market rate interest rates.

§ 248.123 Determination of Federal cost limit.

(a) *Initial determination.* For each eligible low income housing project

appraised under § 248.111, the Commissioner shall determine whether the aggregate preservation rents for the project exceed the amount determined by multiplying the number of dwelling units in the project, according to appropriate unit sizes, by 120 percent of the section 8 existing fair market rent for the appropriate unit sizes.

(b) *Relevant local markets.* If either the extension or transfer preservation rent for a project exceeds the amount determined under paragraph (a) of this section, the Commissioner shall determine whether such extension or transfer preservation rent exceeds the amount determined by multiplying the number of units in the project, according to the appropriate unit sizes, by 120 percent of the prevailing rents in the local market area. The relevant local market, and the prevailing rents in such relevant local market, shall be determined on the basis of the appraisal conducted by the appraiser selected by the Commissioner pursuant to § 248.111 and any other information that the Commissioner determines is appropriate. If there are no comparables in the relevant local market and it is not otherwise possible to determine prevailing rents in that area, the section 8 existing fair market rent shall be the sole measure for determining the Federal cost limit.

(c) *Effect.* The extension or transfer preservation rent for an eligible low income housing project appraised under § 248.111 shall be considered to exceed the Federal cost limit only if the extension or transfer preservation rent exceeds the amount determined under paragraphs (a) and (b) of this section.

§ 248.127 Limitations on action pursuant to Federal cost limit.

(a) *Retention of the project.* With respect to owners who seek to retain the project, the owner may file a plan of action to receive incentives under § 248.153, except that if the extension preservation rent exceeds the Federal cost limit, the amount of the incentives may not exceed an amount that can be supported by a projected income stream equal to the Federal cost limit.

(b) *Transfer of the project.* With respect to owners who seek to transfer the project—

(1) If the transfer preservation rent does not exceed the Federal cost limit, or if the transfer preservation rent exceeds the Federal cost limit and the owner is willing to transfer the project at a price which will result in project rents that, on an aggregate level, do not exceed the Federal cost limit, the owner may file a second notice of intent

indicating an intention to transfer the project under § 248.157; or

(2) If the transfer preservation rent exceeds the Federal cost limit, the owner may file a second notice of intent to transfer the project under § 248.161 or, if no bona fide offers are received, to prepay the mortgage or terminate the mortgage insurance.

§ 248.131 Information from the Commissioner.

(a) *Information to owners terminating affordability restrictions.* Within six months after receipt of a notice of intent to terminate the low income affordability restrictions under § 248.141, the Commissioner shall provide the owner with a description of the criteria for such termination and with information that the owner needs to prepare a plan of action. This shall include information concerning the standards under § 248.141 regarding the approval of a plan of action and a list of the Federal incentives authorized under § 248.153 and available to those projects for which a plan of action involving termination of low income affordability restrictions, through prepayment of the mortgage or termination of the mortgage insurance contract, would not be approvable. The Commissioner shall also provide the owner with any other relevant information which the Commissioner may possess.

(b) *Information to owners extending affordability restrictions.* Within nine months of receipt of a notice of intent to extend the low income affordability restrictions under § 248.153 or to transfer the project under § 248.157, the Commissioner shall provide the owner who submitted the notice with—

(1) A statement of the preservation values of the project as determined under § 248.111;

(2) A statement of the aggregate preservation rents for the project as calculated under § 248.121;

(3) A statement of the applicable Federal cost limit for the market area (or relevant local market, if applicable) in which the project is located, and an explanation of the limitations under § 248.127 on the amount of assistance the Commissioner may provide based on such cost limits;

(4) A statement of whether either of the aggregate preservation rents exceeds the Federal cost limit; and

(5) A direction to file a plan of action and the information necessary to file a plan of action; or

(6) A direction to submit a second notice of intent under § 248.133.

(c) *Information to tenants and State or local governments.* The Commissioner shall provide any information provided

to the owner under paragraphs (a) and (b) of this section to the tenant representative, if any, known to the Commissioner, and shall post a notice in each affected building informing tenants of the name(s), address(es), and telephone number(s) of the tenant representative(s) and appropriate personnel in the local HUD field office, from whom they may obtain this information. The Commissioner shall also provide this information to that officer of State or local government to whom the owner submitted a notice of intent pursuant to § 248.105(c). The Commissioner shall include in the information packet made available to the tenants any other information relating to their rights and opportunities, including—

(1) The potential opportunity of the tenants to become priority purchasers under §§ 248.157 and 248.161; and

(2) The potential opportunity of resident homeownership under §§ 248.173 or 248.175.

§ 248.133 Second notice of intent.

(a) *Filing.* A second notice of intent must be filed by all owners who, after receiving the information provided by the Commissioner in § 248.131, elect to transfer the project under §§ 248.157 or 248.161.

(b) *Timeliness.* A second notice of intent must be submitted not later than 30 days after receipt of the information provided by the Commissioner under § 248.131. If an owner who is required to submit a second notice of intent fails to do so within this time period, the original notice of intent submitted under § 248.105 shall be void and ineffective for purposes of subpart B of this part.

(c) *Filing with the State or local government and tenants.* The owner simultaneously shall file the second notice of intent with that officer of State and local government to whom the owner submitted a notice of intent under § 248.105(c) and with the mortgagee. In addition, the owner shall deliver a copy of the second notice of intent to each tenant representative known to the owner, and if none is known, then to each occupied unit in the project.

§ 248.135 Plans of action.

(a) *Submission.* An owner seeking to terminate the low income affordability restrictions through prepayment of the mortgage or voluntary termination under § 248.141, or to extend the low income affordability restrictions on the project under § 248.153, shall submit a plan of action to the Commissioner in the form and manner prescribed in paragraph (d) or (e) of this section respectively, within

6 months after receipt of the information from the Commissioner under § 248.131.

(b) *Joint Submission.* An owner and purchaser seeking a transfer of the project under §§ 248.157 or 248.161 shall jointly submit a plan of action to the Commissioner in the form and manner prescribed in paragraph (e) of this section within six months after the owner's acceptance of a bona fide offer under § 248.157 or the purchaser's making of a bona fide offer under § 248.161.

(c) *Filing with the State or local government and tenants.* The owner shall notify the tenants of the plan of action by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available from the tenant representatives, whose names, addresses and telephone numbers are indicated on the summary, the local HUD field office, and the on-site office for the project, or if one is not available, in the location where rents are collected, for inspection and copying, at a reasonable cost, during normal business hours. Simultaneously with the submission to the Commissioner, the owner shall submit the plan of action to that officer of State or local government to whom the owner submitted a notice of intent under § 248.105(c). The Commissioner shall submit a copy of the plan of action to the appropriate agency of such State or local government which shall review the plan of action and advise the tenants of the project of any programs that are available to assist the tenants in carrying out the purposes of subpart B of this part.

(d) *Termination of affordability restrictions.* If the plan of action proposes to terminate the low income affordability restrictions through prepayment or voluntary termination in accordance with § 248.141, it shall include:

(1) A description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(2) A description of any proposed changes in the low income affordability restrictions;

(3) A description of any change in ownership that is related to prepayment or voluntary termination;

(4) An assessment of the effect of the proposed changes on existing tenants;

(5) An analysis of the effect of the proposed changes on the supply of housing affordable to low and very low income families or persons in the community within which the project is

located and in the area that the housing could reasonably be expected to serve;

(6) A list of any waivers requested by the owner pursuant to § 248.7; and

(7) Any other information that the Commissioner determines is necessary to achieve the purposes of subpart B of this part.

(e) *Extension of affordability restrictions.* If the plan of action proposes to extend the low income affordability restrictions of the project in accordance with § 248.153 or transfer the project to a qualified purchaser in accordance with §§ 248.157 or 248.161, the plan of action shall include:

(1) A description of any proposed changes in the status or terms of the mortgage or regulatory agreement;

(2) A description of the Federal incentives requested, including cash flow projections and analyses of how the owner will address any physical or financial deficiencies and maintain the low income affordability restrictions of the project;

(3) A description of any assistance from State or local government agencies, including low income housing tax credits that have been offered to the owner or purchaser or for which the owner or purchaser has applied or intends to apply;

(4) A description of any transfer of the property, including the identity of the transferee and a copy of any documents of sale;

(5) An income profile of the tenants as of the date of submission of the plan of action and as of January 1, 1987 (based on the area median income limits established by the Commissioner in February 1987), or if the January 1, 1987 profile is unavailable, a certification from the owner stating its unavailability and a profile as of January 1, 1988, or, if that is also unavailable, a profile as of January 1, 1989;

(6) A transfer of physical assets package, if a transfer is proposed;

(7) A list of any waivers requested by the owner pursuant to § 248.7; and

(8) Any other information that the Commissioner determines is necessary to achieve the purposes of subpart B of this part.

(f) *Revisions.* The owner or owner and purchaser may from time to time revise and amend the plan of action as may be necessary to obtain approval under subpart B of this part and must amend the plan of action no later than 30 days after a change in any of the information required in paragraphs (d) or (e) of this section. The owner or owner and purchaser shall submit any revision to the Commissioner, and provide a copy of the revision to the parties and in the

manner specified in paragraph (c) of this section.

(g) *Failure to Submit.* If the owner fails to submit a plan of action to the Commissioner, when prepayment or termination is sought, within the 6 month period set forth in paragraph (a) of this section or, when a transfer is sought, if the owner and purchaser fail to submit a plan of action within the 6 month time period set forth in paragraph (b) of this section, the notice of intent filed by the owner under § 248.105 shall be ineffective for the purposes of subpart B of this part and the owner shall be barred from submitting another notice of intent under § 248.105 until 6 months after expiration of such period.

(h) *Comment Period for tenants and State or local governments.* Upon submission of the plan of action by the owner, the tenants of the affected project and the State or local government shall have 60 days in which to provide comments on the plan of action to the Commissioner or to the owner, who will then submit the comments to the Commissioner. The Commissioner shall not approve a plan of action under subpart B of this part before the end of this 60-day period and all comments received during this period will be considered by the Commissioner in making its determination to approve or disapprove a plan of action.

(i) *Notification to tenants and the State or local government of plan of action approval.* Upon the Commissioner's approval of the plan of action, the owner shall notify tenants of the terms thereof by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available for inspection and copying during reasonable hours in a location convenient to the tenants.

§ 248.141 Criteria for approval of a plan of action involving prepayment and voluntary termination.

(a) *Approval.* The Commissioner may approve a plan of action that provides for the termination of the low income affordability restrictions through prepayment of the mortgage or voluntary termination of the mortgage insurance contract only upon a written finding that—

(1) Implementation of the plan of action will not—

(i) Materially increase economic hardship for current tenants, and will not in any event result in a monthly rental payment by any current tenant that exceeds 30 percent of the monthly

adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower); or in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that exceeds the increase in the Consumer Price Index or 10 percent (whichever is lower); or

(ii) Involuntarily displace current tenants (except for good cause) where comparable and affordable housing is not readily available, determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement; and

(2) The supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect—

(i) The availability of decent, safe, and sanitary housing affordable to low income and very low income families or persons in the area that the housing could reasonably be expected to serve;

(ii) The ability of low income and very low income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

(iii) The housing opportunities of minorities in the community within which the housing is located.

(3) There are no open audit findings, open findings of noncompliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601-3619); Executive Order 11063 (3 CFR 1959-1963 comp., p. 652); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and all regulations promulgated under such statutes and authorities (including, but not limited to 24 CFR part 100), or outstanding violations of the regulatory agreement.

(b) *Disapproval.* If the Commissioner determines a plan of action to prepay a mortgage or terminate an insurance contract fails to meet the requirements of paragraph (a) of this section, the Commissioner shall disapprove the plan and within a reasonable time, shall inform the owner of the reasons for disapproval and suggest alternatives. In the case of disapproval of the plan of action, except for the failure to meet the requirement of paragraph (a)(3) of this section, the notice of intent filed under § 248.105 shall be rendered ineffective for the purposes of this subtitle, and the owner, in order to receive incentives, must file a new notice of intent under such section. If the plan of action is disapproved because of an outstanding civil rights or audit finding, the finding

must be closed before the Commissioner will approve a plan of action under this section.

§ 248.145 Criteria for approval of a plan of action involving incentives.

(a) *Approval.* The Commissioner may approve a plan of action for extension of the low income affordability restrictions on an eligible low income housing project or for transfer of the housing to a qualified purchaser, other than a resident council, only upon a finding that—

(1) Due diligence has been given to ensuring that the package of incentives set forth in the plan of action is, for the Federal Government, the least costly alternative that is consistent with the full achievement of the purposes of subpart B of this part. The Commissioner will conduct a "windfall profits" test to determine whether the project is located in a rental market where there is an adequate supply of decent, affordable housing. If the project is located in such a rental market, and if the provision of incentives would not serve other public policy objectives under subpart B of this part, then no incentives will be provided to the owner;

(2) The project will be retained as housing affordable for very low, low and moderate income families and persons, as determined under paragraph (a)(8) of this section, for the remaining useful life of the project;

(3) Throughout the remaining useful life of the project, adequate expenditures will be made for maintenance and operation of the project and the project meets the housing standards established in § 248.147 as determined by inspections conducted by the Commissioner;

(4) Current tenants will not be involuntarily displaced, except for good cause;

(5) Any increase in rent contributions for current tenants will be to a level that does not exceed 30 percent of the adjusted income of the tenant or the fair market rent, whichever is lower. However, the rent contributions of any tenants occupying the project at the time of any increase may not be reduced by reason of this paragraph, except with respect to tenants receiving section 8 assistance in accordance with paragraph (a)(7) of this section;

(6) Any resulting increase in rents for current tenants (except for increases made necessary by increased operating costs) shall be phased in as follows:

(i) If such increase is 30 percent or more, the increase shall be phased in equally over a period of not less than three years, with the first increase

occurring upon the effective date of the plan of action, and the subsequent two increases occurring annually thereafter;

(ii) If such increase is more than 10 percent but less than 30 percent, it shall be limited to not more than 10 percent per year;

(7) Section 8 assistance shall be provided, to the extent appropriations are available, if necessary to mitigate any adverse effect on current very low and low income tenants;

(8) Rents for units becoming available to new tenants shall be at levels approved by the Commissioner, taking into account any incentives provided under subpart B of this part, that will ensure, to the extent practicable, that the units will be available and affordable to the same proportions of very low, low and moderate income families and persons, including families and persons whose incomes are 95 percent or more of area median income, as based on the area median income limits established by the Commissioner in February 1987, as resided in the project as of the date of the tenant income profile submitted under § 248.135(e)(5), or the date the plan of action is approved, whichever date results in the highest proportion of very low income families. This limitation shall not prohibit a higher proportion of very low income families and persons from occupying the project;

(9) Future rent adjustments shall be—
(i) Made by applying an annual factor, to be determined by the Commissioner, to the portion of rent attributable to operating expenses for the project; and

(ii) Subject to a procedure, established by the Commissioner, for owners to apply for rent increases not adequately compensated by annual adjustment under paragraph (a)(9)(i) of this section, under which the Commissioner may increase rents in excess of the amount determined under paragraph (a)(9)(i) of this section only if the Commissioner determines such increases are necessary to reflect extraordinary necessary expenses of owning and maintaining the project;

(10) Any savings from reductions in operating expenses due to management efficiencies shall be deposited in project reserves for replacement and the owner shall have periodic access to such reserves, to the extent the Commissioner determines that the level of the reserves is adequate and that the project is maintained in accordance with the standards established in § 248.147;

(11) The mortgage on the project is current; and

(12) There are no open audit findings, open findings of noncompliance with title VI of the Civil Rights Act of 1964 (42

U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601-3619); Executive Order 11063 (3 CFR 1959-1963 comp., p. 652); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and all regulations promulgated under such statutes and authorities (including, but not limited to, 24 CFR part 100), or outstanding violations of the regulatory agreement.

(b) *Compliance with housing standards.* No incentives under § 248.153 may be provided, other than to qualified purchasers under §§ 248.157 and 245.161, and no distributions may be taken by the owner or purchaser, until the Commissioner determines that the project meets the housing standards set forth in § 248.147, except that incentives designed to correct deficiencies in the project may be provided.

(c) *Implementation.* Any agreement to maintain the low income affordability restrictions for the remaining useful life of the project may be made through execution of a new regulatory agreement, modifications to the existing regulatory agreement or mortgage, or in the case of prepayment of a mortgage or voluntary termination of mortgage insurance, a recorded instrument.

(d) *Determination of remaining useful life.* The Commissioner shall make determinations, on the record and after opportunity for a hearing, as to when the useful life of an eligible low income housing project has expired. Under procedures and standards to be established by the Commissioner, owners of eligible low income housing may petition the Commissioner for a determination that the useful life of such project has expired. Such petition may not be filed before the expiration of the 50-year period beginning upon the approval of a plan of action under subpart B of this part with respect to such project. In making a determination pursuant to a petition under paragraph (d) of this section, the Commissioner shall presume that the useful life of the project has not expired, and the owner shall have the burden of proof in establishing such expiration. The Commissioner may not determine that the useful life of any project has expired if such determination results primarily from failure to make regular and reasonable repairs and replacement, as became necessary. In making a determination regarding the useful life of any project pursuant to a petition submitted under paragraph (d) of this section, the Commissioner shall provide for comment by tenants of the project and interested persons and organizations with respect to the

petition. The Commissioner shall also provide the tenants and interested persons and organizations with an opportunity to appeal a determination under paragraph (d) of this section.

(e) In the case of any plans of action involving incentives the owner must agree to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601-3619); Executive Order 11063 (3 CFR 1959-1963 comp., p. 652); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (including the Department's Accessibility Guidelines (24 CFR chapter I, subchapter A, appendix II) and all regulations issued pursuant to these authorities.

§ 248.147 Housing standards.

(a) *Standards.* As a condition to receiving incentives under subpart B of this part, the owner shall agree to maintain the project in accordance with local housing codes and the housing quality standards set forth in § 886.307 of this title. Where a housing quality standard conflicts with local housing codes, the owner shall maintain the project in compliance with the standard that is stricter.

(b) *Annual inspections.* The Commissioner shall inspect each project at least annually in order to determine compliance with the housing quality standards. At least 30 days prior to the inspection, the Commissioner shall notify any tenant representatives, or if none exist, the Commissioner shall provide the owner with a notice to be posted in each affected building, stating the time and date of the inspection and advising any interested tenants that they may accompany HUD personnel on the inspection and/or submit any comments they may have on the physical condition of the project. The Commissioner shall notify the owner of any deficiencies within 30 days following the inspection. The owner shall have 90 days from the date of such notification to correct any deficiencies cited by the Commissioner and shall promptly notify the Commissioner when such deficiencies have been corrected. The Commissioner shall reinspect the project upon such notification or, if the owner does not notify the Commissioner, upon the expiration of the 90-day period.

(c) *Sanctions for noncompliance.* If the Commissioner determines, upon reinspection of the project, that the project is still not in compliance with the standards set forth in paragraph (a) of this section, the Commissioner shall take any action appropriate to bring the project into compliance, including—

(1) Directing the mortgagee, with respect to an equity take-out loan provided under part 241 of this chapter, to withhold the disbursement to the owner of any escrowed loan proceeds and requiring that such proceeds be used for repair of the project; and

(2) Reduce the amount of the allowable distributions to 4 percent of extension preservation equity or (in the case of a purchaser 4 percent of cash invested, as appropriate, for the period ending upon a determination by the Commissioner that the project is in compliance with the standards and requiring that such amounts be used for repair.

(d) *Continued compliance.* To ensure continued compliance with the standards set forth in paragraph (a) of this section for a project subject to any action under paragraph (c) of this section, the Commissioner may limit access of and use by the owner of such amounts set forth in paragraph (c) of this section, for not more than the 2-year period beginning upon the determination that the project is in compliance with the housing standards.

(e) *Sanctions for continuous noncompliance.* If, upon inspection, the Commissioner determines that any eligible low income housing project has failed to comply with the standards established under this section for two consecutive years, the Commissioner may, upon notification to the owner of the noncompliance, take one or more of the following actions:

(1) Subject to the availability of appropriations, provide assistance, other than project-based assistance attached to the project, under parts 882 and 887 of this title for any tenant eligible for such assistance who desires to terminate occupancy in the project. For each unit in the project vacated pursuant to the provision of assistance under this paragraph, the Commissioner may, notwithstanding any other law or contract for assistance, cancel the provision of project-based assistance attached to the project for one dwelling unit, if the project is receiving such assistance, or convert the project-based assistance allocation for that unit to assistance under part 882 or 887 of this title;

(2) In the case of projects for which an equity take-out loan has been made under part 241 of this chapter, direct the mortgagee to declare such a loan to be in default and accelerate the maturity date of the loan;

(3) Declare, or direct the insured mortgagee to declare, any rehabilitation loan insured or provided by the Commissioner with respect to the project, including loans provided under

part 219 of this chapter, to be in default and accelerate the maturity date of the loan; and

(4) Suspend payments under or terminate any contract for project-based rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(f) *Sanctions not exclusive.* The Commissioner may take any other action authorized by law or the project regulatory agreement to ensure that the project will be brought into compliance with the standards established under this section or with other requirements pertaining to the condition of the project.

§ 248.149 Timetable for approval of a plan of action.

(a) *Notification of deficiencies.* Not later than 60 days after receipt of a plan of action, the Commissioner shall notify the owner in writing of any deficiencies that prevent the plan of action from being approved. Such notice shall describe alternative ways in which the plan may be revised to meet the criteria for approval set forth in § 248.145.

(b) *Notification of approval.* Not later than 180 days after receipt of a plan of action, or such longer period as the owner requests, but not more than 365 days, the Commissioner shall notify the owner in writing whether the plan of action, including any revisions, is approved. If approval is withheld, the notice shall describe—

(1) The reasons for withholding approval; and

(2) Suggestions to the owner for meeting the criteria for approval.

(c) *Opportunity to revise.* The Commissioner shall give the owner a reasonable opportunity of not more than 60 days to revise the plan of action when approval is denied. If the owner fails to comply with this time period, it shall not be eligible for relief under paragraph (d) of this section.

(d) *Delayed approval.* If the Commissioner fails to approve a plan of action within the time set forth in paragraph (b) of this section, the Commissioner shall provide incentives and assistance under subpart B of this part, to an owner who is entitled to receive such incentives and assistance, in the amount that the owner would have received if the Commissioner had complied with such time limitations. Paragraph (d) of this section does not apply to plans of action that are not approved because of deficiencies.

§ 248.153 Incentives to extend low income use.

(a) *Agreements by the Commissioner.* After approving a plan of action filed pursuant to § 248.145, from an owner of eligible low income housing that includes the owner's plan to extend the low income affordability restrictions of the project, the Commissioner shall, subject to the availability of appropriations for such purpose, enter into such agreements as are necessary to enable the owner to—

(1) Receive the annual authorized return for the project as determined under § 248.121;

(2) Pay debt service on the federally-assisted mortgage(s) covering the project;

(3) Pay debt service on any loan for rehabilitation of the project;

(4) Meet project operating expenses; and

(5) Establish adequate reserves.

(b) *Permissible incentives.* Such agreements may include one or more of the following incentives, as determined necessary by the Commissioner:

(1) Increased access to residual receipts accounts as necessary to enable the owner to realize the annual authorized return;

(2) An increase in the rents permitted under an existing project-based section 8 contract;

(3) Additional project-based section 8 assistance or an extension of any project-based assistance attached to the housing;

(4) An increase in the rents on non-section 8 units occupied by current tenants up to the maximum allowable rents;

(5) Financing of capital improvements under part 219 of this chapter;

(6) Financing of rehabilitation through provision of insurance for a second mortgage under part 241 of this chapter;

(7) Redirection of the Interest Reduction Payment subsidies to a second mortgage for projects which are insured, assisted, or held by the Commissioner or a State or State agency under part 236 of this chapter;

(8) Access by the owner to a portion of the preservation equity in the project through provision of insurance for an acquisition or equity loan insured under part 241, subpart E of this chapter or through a non-insured mortgage loan approved by the Commissioner and the mortgagee;

(9) An increase in the amount of allowable distributions up to the annual authorized return; and

(10) Other incentives authorized in law.

(c) *Limitation on the provision of permissible incentives.* (1) The total

amount of incentives provided to a project under paragraphs (b)(2), (3), and (4) of this section shall not result in a projected rental income stream which exceeds the Federal cost limit.

(2) The debt service on the loan obtained by the owner under paragraph (b)(8) of this section, when added to the allowable distributions under paragraph (b)(9) of this section, shall not exceed the annual authorized return.

(d) *Interest reduction subsidies.* Where Interest Reduction Payment subsidies are sought to be redirected, pursuant to paragraph (b)(7) of this section, the lender may not unreasonably withhold its consent to such redirection.

(e) *Recalculation of section 236 basic rent and market rent.* With respect to any project with a mortgage insured or otherwise assisted pursuant to part 236 of this chapter, the basic rent and market rent, as defined in § 236.2 of this chapter, for each unit in such project may be increased to take into account the allowable distributions permitted under this section and the debt service on any equity loan, rehabilitation loan or acquisition loan approved under a plan of action under subpart B of this part.

§ 248.157 Voluntary sale of housing not in excess of Federal cost limit.

(a) *Offer to sell.* Where an owner has submitted a second notice of intent under § 248.133 for the purpose of transferring the project to a qualified purchaser, and the transfer preservation rent does not exceed the Federal cost limit, the owner shall offer the housing for transfer as provided in this section. The owner shall not be obligated to accept any offer made under this section, but may instead elect to retain the project and receive incentives under § 248.145.

(b) *Notification of qualified purchasers.* Upon receipt of a second notice of intent to transfer the project to a qualified purchaser, the Commissioner shall notify potential qualified purchasers of the availability of the project for sale, and of the names and addresses of the owner, or of a person representing the owner in the sale of the project, by—

(1) Mailing notices to non-profit organizations;

(2) Placing notices in the major local newspaper(s) in the jurisdiction in which the project is located;

(3) Mailing notices to clearinghouse networks; and

(4) Using any other means of notification which the Commissioner determines would be effective to notify

potential qualified purchasers of the sale of the project.

(c) *Right of first offer to priority purchasers.* (1) For the 6-month period beginning on the date of receipt by the Commissioner of a second notice of intent under § 248.133, the owner may accept a bona fide offer only from:

(i) A resident council intending to purchase the project under §§ 248.173 or 248.175, which has met the requirements for tenant support, pursuant to those sections;

(ii) A resident council intending to purchase the project and retain it as rental housing, which has the support of a majority of the tenants; or

(iii) A community-based nonprofit organization which has the support of a majority of the tenants.

(2) If no bona fide offer to purchase the project is made and accepted during or at the end of the 6-month period specified in paragraph (c)(1) of this section, the owner may offer to sell the project during the next 6 months to any priority purchasers.

(3) If no bona fide offer to purchase the project is made and accepted during or at the end of the 6-month period specified in paragraph (c)(2) of this section, the owner may offer to sell the project during the 3 months immediately following that period only to qualified purchasers.

(d) *Purchase price.* The sale price, including assumption of the debt on the federally-assisted mortgage(s), or the amount of the debt on the federally-assisted mortgage(s) that the project is taken subject to, may not exceed the transfer preservation value of the project.

(e) *Expression of interest.* Any priority purchaser seeking to make an offer during the 6-month periods specified in paragraph (c) of this section shall, and other qualified purchasers may, submit written notice thereof to the Commissioner. Such notice, if made by a priority purchaser seeking to make an offer during either 6-month priority purchaser marketing period, shall contain the following:

(1) A statement identifying the priority purchaser as a State or local government agency, a nonprofit organization, or a resident council;

(2) A copy of its articles of incorporation, charter and list of officers and directors, if the purchaser is a nonprofit organization or a resident council and in the case of a nonprofit organization, proof that the organization is, or has applied to be, a tax exempt organization in accordance with 26 U.S.C. 501(c); and

(3) A statement as to whether the purchaser is affiliated with any other entity for purposes of purchasing the project and whether any Low Income Housing Tax Credits may be awarded in connection with the purchase of the project.

(f) *Information from the Commissioner.* Within 30 days of receipt of an expression of interest by a priority purchaser, the Commissioner shall determine the status of the priority purchaser with respect to the categories listed in paragraph (h) of this section, and provide such purchaser with:

(1) A list of all possible assistance available from the Federal Government to facilitate a transfer of the project;

(2) The appraisal reports for the project as submitted under § 248.111;

(3) The Commissioner's determination as to the priority status of the purchaser and as to whether the purchaser qualifies as a resident council, community-based nonprofit organization or State or local government entity;

(4) A worksheet indicating the level of the earnest money deposit required upon the submission of a bona fide offer;

(5) An acknowledgment of the purchaser's right to inspect the project; and

(6) Any other relevant financial information that the Commissioner possesses concerning the project, including the information determined under § 248.121.

Within the same 30-day period, the Commissioner shall also notify the owner of the purchaser's expression of interest and instruct the owner to provide to the purchaser any information concerning the project that the Commissioner deems relevant to the transfer of the project.

(g) *Bona fide offer.* A bona fide offer is an offer to purchase eligible low-income housing at a sales price which does not exceed the transfer preservation value of the project.

(1) A bona fide offer must include the following:

(i) A contract of sale signed by the purchaser, which states that acceptance of the contract is contingent upon approval by the Commissioner;

(ii) An earnest money deposit from every qualified purchaser equal to the lesser of one percent of the transfer preservation value, \$50,000 or \$500 per unit, unless the purchaser is a resident council purchasing the project under a resident homeownership plan under § 248.173 or § 248.175, in which case the earnest money deposit shall be equal to \$200 per unit from 75% of the occupied units; and

(iii) If the purchaser is a resident council intending to purchase the project

pursuant to a resident homeownership plan, the information required under § 248.173(b); or

(iv) If the purchaser is a resident council intending to retain the project as rental housing, or a community-based nonprofit and the offer is submitted within the marketing period established in paragraph (c)(1) of this section, a resolution of the resident council, or a petition signed by tenants representing a majority of the units indicating their support of the offer.

(2) An owner may waive the requirement of an earnest money deposit or agree to accept a smaller deposit for all qualified purchasers, except resident councils who intend to purchase the project pursuant to a resident homeownership plan under § 248.173 or § 248.175. In order to be effective:

(i) The waiver must be indicated in the second notice of intent submitted under § 248.133 and the waiver must apply equally to all qualified purchasers, except resident councils who intend to purchase the project pursuant to a resident homeownership plan under § 248.173 or § 248.175; or

(ii) If the second notice of intent has already been submitted, the owner must submit to the Commissioner, in writing, its decision to waive the earnest money deposit. The Commissioner shall notify all qualified purchasers who have submitted an expression of interest under paragraph (e) of this section that the owner has waived the earnest money deposit requirement.

(h) *Retention and acceptance of offers.* The owner shall accept or reject any bona fide offer within 30 days of receipt of such offer. For an offer to be bona fide, it must meet the requirements of paragraph (g) of this section, as well as be submitted to the owner within the appropriate marketing period under paragraph (c) of this section. If an owner rejects any offer, it must return the earnest money deposit to the offeror at the time of rejection. A bona fide offer which is rejected by the owner will still be considered a bona fide offer for purposes of this section, even after the earnest money deposit has been returned. If an owner decides to accept the offer at a later date, the purchaser may renew the offer by resubmitting the earnest money deposit, if a deposit had originally been required, within 30 days of notification of the owner's acceptance of the offer.

(i) *Submission of offer to HUD.* The purchaser shall submit the offer to the Commissioner. The Commissioner shall review the offer which is preliminarily accepted by the owner to determine whether it meets the requirements of a

bona fide offer. The Commissioner shall notify the owner and purchaser, within 30 days after acceptance, whether the offer meets such requirements. The owner's preliminary acceptance of any offer pursuant to this section shall be conditional upon the Commissioner's certification that the offer is bona fide. If the Commissioner determines that the offer is not a bona fide offer, the offer will be considered invalid for the purposes of subpart B of this part.

(j) *Submission of plan of action.* Upon a determination by the Commissioner that the offer is bona fide and final acceptance of such an offer, the owner and purchaser shall jointly submit a plan of action to the Commissioner pursuant to § 248.135. The plan of action shall include any request for assistance from the Commissioner for purposes of transferring the project.

(k) *Requirements for plan of action approval.* If the qualified purchaser of the project is a resident council seeking to purchase the project under a resident homeownership program, the Commissioner may approve a plan of action only if the resident council's proposed resident homeownership program meets the requirements under § 248.173 or § 248.175. For all other qualified purchasers, the Commissioner may approve a plan of action submitted pursuant to this section only if the plan of action meets the criteria listed in § 248.145.

(l) *Failure to consummate sales transaction.* (1) If the owner accepts an offer from a priority purchaser during either of the two 6-month periods specified in paragraph (c) of this section, and before the expiration of the period specified in paragraph (c) of this section, the sales transaction either falls through or does not close within 90 days after the Commissioner's approval of the plan of action, the owner shall:

(i) Immediately notify the Commissioner that the sale has fallen through;

(ii) Notify any other purchaser that had submitted an offer to purchase the project; and

(iii) Resume holding the project open for sale for the remainder of the time periods specified in paragraph (c) of this section.

(2) If the owner accepts an offer from a purchaser, and during the 3-month period specified in paragraph (c) of this section, or thereafter, the sales transaction either falls through or does not close within 90 days after the Commissioner's approval of the plan of action, the owner shall take the following steps:

(i) Immediately notify the Commissioner that the sale has fallen through;

(ii) Contact any other purchaser that had submitted an offer to purchase the project and give such purchaser and any other qualified purchaser 60 days from the date of notification to the Commissioner in which to resubmit an offer to purchase the project.

(3) At any time during the 60-day period the owner may accept an offer submitted under paragraph (1)(2) of this section.

(4) If an offer submitted during the 60-day period specified in paragraph (1)(2) of this section is made and accepted, but the sale is not consummated within 90 days of the Commissioner's approval of the plan of action for reasons not attributable in whole or in part to the owner, the owner may terminate the low-income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of § 248.165.

(m) *Assistance.* Subject to the availability of amounts approved in appropriation acts, the Commissioner shall, for approvable plans of action, provide assistance sufficient to enable qualified purchasers to:

(1) Acquire the eligible low income housing project from the current owner for a purchase price not greater than the transfer preservation value of the project;

(2) Pay the debt service on the federally-assisted mortgage(s) covering the project;

(3) Pay the debt service on any loan for the rehabilitation of the project;

(4) Meet project operating expenses and establish adequate reserves for the housing;

(5) Receive a return on investment in an amount equal to 8 percent on any actual cash investment made to acquire the project;

(6) In the case of a priority purchaser, receive an adequate reimbursement for transaction expenses relating to acquisition of the project, not in excess of 5% of the project's transfer preservation equity, subject to approval by the Commissioner in accordance with standards applicable to insured loan transactions under this chapter; and

(7) In the case of an approved resident homeownership program, cover the costs of training for the resident council, homeownership counseling and training, the fees for the nonprofit entity or public agency working with the resident council, if such entity or agency is approved by the Commissioner, and costs related to relocation of tenants who elect to move. Assistance for such

costs, exclusive of relocation expenses, shall not exceed \$500 per unit or \$200,000 for the project, whichever is less.

(n) *Incentives; residual receipts.* The Commissioner may provide assistance for all qualified purchasers under subpart B of this part in the form of one or more of the incentives authorized under § 248.153, except that any residual receipts for the project transferred to the owner shall be deducted from the sale price of the project. The incentives provided by the Commissioner to any qualified purchaser may include an acquisition loan provided under subpart E of part 241 of this chapter.

(o) *Grants to priority purchasers.* The Commissioner may provide assistance for priority purchasers under subpart B of this part in the form of a grant for each unit in the project in an amount, as determined by the Commissioner, that does not exceed the present value of the total of the projected fair market rent for the next ten years, or such longer period if additional assistance is necessary to cover the costs set forth in paragraph (m) of this section.

(p) *Reimbursement of assistance.* The Commissioner reserves the right to seek reimbursement from a priority purchaser who, within ten years of approval of a plan of action, becomes affiliated with or transfers the project to any non-priority purchaser. The Commissioner shall be entitled to receive reimbursement for the difference between the assistance provided to the priority purchaser and the assistance that would have been provided in the same circumstances to a non-priority purchaser.

(q) *Seller financing.* In order to finance the acquisition or rehabilitation of a project under this section, a qualified purchaser may receive take-back financing from the owner of the project. If the purpose of the seller financing is to aid acquisition of the project, the principal amount of such financing, together with an acquisition loan provided under part 241 of this chapter, may not exceed the transfer preservation equity of the project, plus, in the case of priority purchasers, any expenses associated with the acquisition, loan closing, and implementation of the plan of action. If the purpose of the seller financing is to fund rehabilitation of the project, the principal amount of such financing may not exceed the equity requirements for a rehabilitation loan under § 241.70 or § 219.305 of this chapter. The seller may not charge interest on any seller financing at a rate in excess of that of the Federal acquisition or rehabilitation loan.

§ 248.161 Mandatory sale of housing in excess of the Federal cost limit.

(a) *In general.* With respect to any eligible low income housing for which the transfer preservation rent determined under § 248.121 exceeds the Federal cost limit, the owner shall offer the housing for transfer to qualified purchasers as provided in this section.

(b) *Applicability of voluntary sale provisions.* The provisions of § 248.157, other than paragraphs (a) and (p) of this section thereof, shall be applicable to any sale conducted under this section. If the owner receives an offer to purchase the project for a sale price equal to the transfer preservation value of the project, as determined under § 248.111, the owner shall be obligated to accept the offer upon its receipt and sell the project to the purchaser. If the owner receives an offer to purchase the project for a sale price less than the transfer preservation value of the project, the owner may accept the offer, but is not obligated to do so. Any offer to purchase a project under this section for less than the transfer preservation value must comply with the requirements of a bona fide offer in § 248.101, except for the requirement that the sale price equal the transfer preservation value. At the time of submission of the offer, the potential purchaser must also submit the documentation required in § 248.157(g).

(c) *Section 8 assistance.* Subject to the availability of amounts approved in appropriation acts, the Commissioner shall, for approvable plans of action, provide assistance to qualified purchasers under part 886, subpart A of this title sufficient to produce a gross potential income equal to the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market in which the project is located by the number of units in the project, according to appropriate unit size, and any other incentives authorized under § 248.153 that would have been provided to a qualified purchaser under § 248.157.

(d) *Grants to qualified purchasers.* From amounts made available by Congress, the Commissioner may make grants to assist in the completion of transfers under this section to any qualified purchasers. Any grant made pursuant to paragraph (d) of this section shall be in an amount not exceeding the difference between the amount of assistance provided under paragraph (c) of this section and the amount of assistance specified in § 248.157(m).

(e) *Securing State and local funding.* The Commissioner shall assist any qualified purchaser of a project pursuant to this section in securing funding and

other assistance, including tax and assessment reductions from State and local governments to facilitate a transfer under this section.

§ 248.165 Assistance for displaced tenants.

(a) *Section 8 assistance.* Each low income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low income housing shall, subject to the availability of funds, receive assistance under parts 882 or 887 of this title in the form of section 8 certificates or vouchers. At its discretion, the Commissioner may set the section 8 existing fair market rent levels at the exception rent in order to allow tenants to use the certificates or vouchers to remain at the project.

(b) *Notification of Commissioner.* The owner of any eligible low income housing project who prepays the mortgage or voluntarily terminates the mortgage insurance contract pursuant to subpart B of this part, shall notify the Commissioner of:

(1) The names and addresses of all of the tenants in the project who will be displaced;

(2) The size of the unit in which each of the displaced tenants is currently dwelling; and

(3) The names of all of the displaced tenants who are special needs tenants, as that term is defined in § 248.101, as well as a statement as to the nature of their special need.

The owner shall provide the Commissioner with this information within 30 days of identifying such tenants for displacement, but in no event less than 30 days prior to the date when the tenants must vacate the premises.

(c) *Relocation of displaced tenants.* The Commissioner shall coordinate with public housing agencies to ensure that any very low or low income family displaced from eligible low income housing as the result of prepayment of the mortgage or termination of the mortgage insurance contract on such project is able to acquire a suitable, affordable dwelling unit in the area where the project from which the displaced family is located. The Commissioner, upon receiving information from the owner under paragraph (b) of this section stating that certain tenants will be displaced, shall request from the public housing agencies located in the same area as the affected project, notices of vacancies in other affordable projects which would be suitable for the displaced tenants. The Commissioner shall convey the notices of vacancies to the tenants who will be

displaced along with the addresses of the local public housing agencies.

(d) *Relocation expenses.* The Commissioner shall require the owner of eligible low income housing who prepays or terminates the insurance contract resulting in the displacement of tenants to pay 50 percent of the relocation expenses of each family which is relocated, except that the Commissioner shall increase such percentage to the extent that State or local law of general applicability requires a higher payment by the owner.

(e) *Continued occupancy.* Each owner who prepays the mortgage or terminates the mortgage insurance contract on eligible low income housing shall, as provided in paragraph (g) of this section, allow the tenants occupying units in such project on the date of submission of a notice of intent under § 248.105 to remain in the project for a period of three years, commencing on the date of prepayment or contract termination, at rent levels existing at the time of prepayment or termination, except for rent increases made necessary due to increased operating costs.

(f) *Replacement unit.* In any case in which the Commissioner requires an owner to allow tenants to occupy units under paragraph (e) of this section, an owner may fulfill the requirements of such paragraph by providing such assistance necessary for the tenant to rent a decent, safe, and sanitary unit in another project for the same 3-year period and at a rental cost to the tenant not in excess of the rental amount the tenant would have been required to pay to the owner in the owner's project, except that the tenant must freely agree to waive the right to occupy the unit in the owner's project. The provisions of paragraph (d) of this section requiring an owner who prepays or terminates an insurance contract to pay a portion of the relocation expenses incurred by displaced tenants shall also be applicable to tenants who relocate pursuant to this paragraph.

(g) *Applicability.* The provisions of paragraphs (e) and (f) of this section shall apply only to:

(1) All tenants in eligible low income housing projects located in a low-vacancy area; and

(2) Special needs tenants.

(h) *Low Vacancy Areas.* The Commissioner shall notify the owner, within 30 days of the owner's request to prepay under § 248.169, whether the project is located in a low vacancy area for purposes of paragraph (g) of this section.

(i) *Required acceptance of section 8 assistance.* Any owner who prepays the mortgage or terminates the mortgage

insurance contract on eligible low income housing and maintains the project for residential rental occupancy may not refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny the rental of a dwelling unit in such project to any person, or discriminate against any person in the terms, conditions, or privileges or rental of a unit, or in the provision of services or facilities in connection therewith, because the person receives assistance under parts 882 or 887 of this title.

(j) *Regional pools.* In providing assistance under this section, the Commissioner shall allocate the assistance on a regional basis through the regional offices of the Department of Housing and Urban Development. The Commissioner shall allocate assistance under this section in a manner so that the total number of assisted units in each such region available for occupancy by, and affordable to, low income families and persons does not decrease because of the prepayment of a mortgage on eligible low income housing or the termination of an insurance contract on such project.

(k) This section shall only apply to prepayments and terminations occurring pursuant to §§ 248.157(l) and 248.169.

§ 248.169 Permissible prepayment or voluntary termination and modification of commitments.

(a) *In general.* Notwithstanding any limitations on prepayment or voluntary termination under subpart B of this part, an owner may terminate the low income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of § 248.165, under one of the following circumstances:

(1) The Commissioner approves a plan of action under § 248.153(a), but does not provide the assistance approved in such plan and contained in an executed use agreement between the Commissioner and the owner, including section 8 assistance or a loan provided under part 219 of this chapter, but not including insurance of a rehabilitation or equity take-out loan under part 241 of this chapter, during the 15-month period beginning on the date of final approval of the plan of action;

(2) After the date that the project would have been eligible for prepayment pursuant to the terms of the mortgage, notwithstanding this part, the Commissioner approves a plan of action under § 248.157 or § 248.161, but does not provide the assistance approved in such plan, including section 8 assistance, a loan provided under part

219 of this chapter, a grant provided under § 248.157(o), or a grant under § 248.161(d), before the earlier of:

(i) The expiration of the 2-month period beginning on the commencement of the first fiscal year beginning after such final approval; or

(ii) The expiration of the 6-month period beginning on the date of final approval.

(3) The Commissioner approves a plan of action under §§ 248.157 or 248.161 for any eligible low income housing not covered by paragraph (a)(2) of this section, but does not provide the assistance approved in such plan before the earlier of:

(i) The expiration of the 2-month period beginning on the commencement of the first fiscal year beginning after such final approval; or

(ii) The expiration of the 9-month period beginning on the date of final approval.

(4) An owner who intended to transfer the project to a qualified purchaser under § 248.157 or § 248.161, and fully complied with the provisions of such section,

(i) Did not receive any bona fide offers from any qualified purchasers within the applicable time periods; or

(ii) Received and accepted a bona fide offer from a qualified purchaser, but the sales transaction fell through for reasons not attributable in whole or in part to the owner, and the owner then complied with the requirements of § 248.157(l) and did not receive another bona fide offer from any qualified purchasers.

(b) *Section 8 assistance.* When providing section 8 assistance, the Commissioner may enter into a contract with an owner, contingent upon the future availability of appropriations, for the purpose of renewing expiring contracts for rental assistance as provided in appropriations acts, to extend the term of such rental assistance for such additional period or periods necessary to carry out an approved plan of action. The contract and approved plan of action shall provide that, if the Commissioner is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Commissioner, upon the request of the owner, shall take the following actions, subject to the limitations under the following paragraphs:

(1) Modify the binding commitments made pursuant to § 248.145(a)(2)-(10) that are dependent upon such rental assistance; or

(2) If the Commissioner determines that such modification is infeasible, permit the owner to prepay the mortgage and terminate the plan of action and any implementing use agreements or restrictions, but only if the owner agrees in writing to comply with the provisions of § 248.165.

(c) *Failure to provide section 8 assistance.* With regard to paragraph (b) of this section, the Commissioner shall notify the owner of an inability to either extend the term of section 8 rental assistance or to develop a revised package of incentives providing benefits comparable to those received under the original plan of action as soon as practicable upon discovering that fact. The owner shall inform the Commissioner in writing, within 30 days of receipt of the notice that, since the Commissioner is unable to fulfill the terms of the original plan of action, the owner intends to request that the Commissioner take action under paragraphs (b)(1) or (2) of this section. The Commissioner shall, no later than 90 days from receiving the owner's notice, take action to extend the rental assistance contract and to continue the binding commitments under § 248.145(a)(2)-(10).

§ 248.173 Resident homeownership program.

(a) *Formation of resident council.* Tenants seeking to purchase eligible low income housing in accordance with §§ 248.157 and 248.161 shall organize a resident council for the purpose of developing a resident homeownership program in accordance with standards established by the Commissioner. In order to fulfill the purposes of this section, the resident council shall work with a public or private nonprofit organization or a public body, including an agency or instrumentality thereof. Such organization shall have sufficient experience to enable it to help the tenants to consider their options and to develop the capacity necessary to own and manage the project, where appropriate, and shall be approved by the Commissioner.

(b) *Submission of expression of interest.* A resident council shall identify itself as such in an expression of interest submitted pursuant to § 248.157 or § 248.161 and shall state that, it is interested in purchasing the project pursuant to a homeownership program.

(c) *Bona fide offer.* When submitting an offer to purchase the project pursuant to this section, the resident council must simultaneously submit a certified list of project tenants representing at least 75 percent of the occupied units in the project, and representing at least 50

percent of all of the units in the project, who have expressed an interest in participating in the homeownership program developed by the resident council. An offer made without this certified list will not be considered a bona fide offer for the purposes of subpart B of this part.

(d) *Submission of a homeownership program.* (1) The resident council shall prepare a homeownership program acceptable to the Commissioner for giving all residents of the project an opportunity to become homeowners. The plan shall describe the major elements of, and schedules for, the homeownership program and demonstrate how the program complies with all applicable requirements of this section. The plan shall also describe the resident council's current abilities and proposed capacity-building activities to successfully carry out the homeownership program in compliance with this section. The homeownership program shall include, at a minimum, the following information:

(i) The amount of grant funds requested from the Commissioner, and the expected amounts and sources of other funding;

(ii) The proposed use of the grant funds to be received from HUD and of all other funds, including proceeds from the sale of units to initial purchasers, consistent with paragraph (h) of this section;

(iii) A summary of major rehabilitation activities to be carried out, including repairs, replacements and improvements;

(iv) The price at which the resident council intends to transfer ownership interests in, or shares representing, units in the project, broken down by unit size and/or type; the factors that will influence the establishment of such price, including, but not limited to, the resident council's acquisition cost, estimated rehabilitation costs, capitalization of reserves and organizational costs; how the price arrived at by the resident council compares to the estimated appraised value of the ownership interests or shares; and the underwriting standard that the resident council plans to use, or reasonably expects a public or private lender to use, for potential tenant purchasers, consistent with paragraph (g)(2) of this section;

(v) The expected number of very low, low and moderate income tenants that will be initial owners under the program, consistent with paragraph (g)(1) of this section;

(vi) A pro forma analysis which demonstrates the financial feasibility

and viability of the homeownership program, based on the required conditions specified in paragraph (g) of this section:

(vii) The financing arrangements that the tenants are expected to pursue or to be provided, including financing available through the resident council or a State or local governmental entity, and criteria for acceptability of conventional financing;

(viii) A description of the estimated costs expected to be paid by the homeowner at closing;

(ix) The type of homeownership contemplated, consistent with paragraph (f) of this section;

(x) How the marketing of currently vacant units and units occupied by nonpurchasing tenants that become vacant will affect the sales price and occupancy charges to purchasers;

(xi) A workable schedule of sale, subject to the limitations of paragraph (o) of this section, based on estimated tenant incomes;

(xii) Any restrictions on resale by homeowners over and above those specified in paragraph (i) of this section, and any restrictions on homeowners' equity, over and above those specified in paragraph (k) of this section;

(xiii) The qualifications of the resident council or the proposed management entity to manage the project, in compliance with paragraph (n) of this section;

(xiv) The expected number of non-purchasing tenants and their eligibility for section 8 rental assistance under paragraph (m)(2) of this section;

(xv) Expected scope and expenses of relocation activities, both for any temporary relocation due to rehabilitation as well as relocation assistance for nonpurchasing tenants, consistent with paragraph (m)(4) of this section;

(xvi) Expected scope and costs of technical assistance, training and counseling for the resident council, purchasers and non-purchasing tenants; and

(xvii) A certification that the resident council shall comply with the provisions of the Fair Housing Act (42 U.S.C. 3601-3619); title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); Executive Order 11063 (3 CFR 1959-1963 comp., p. 652); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); and all regulations issued pursuant to these statutes and authorities.

(2) The Commissioner shall give the resident council a reasonable opportunity to revise the

homeownership program if approval is denied.

(e) *Approval of a homeownership program; assistance provided.* (1) When the Commissioner determines that the homeownership program submitted by the resident council meets the requirements of this section, is financially feasible, and is the least costly alternative that is consistent with establishing a viable homeownership program, the Commissioner shall approve the program.

(2) In connection with an approved homeownership program the Commissioner shall provide assistance sufficient to pay the following costs:

(i) The purchase price, which shall not exceed the transfer preservation value;

(ii) Transaction costs, as provided in § 248.157(m)(6);

(iii) Other costs, as provided in § 248.157(m)(7);

(iv) The costs of rehabilitation;

(v) The establishment of an adequate reserve for replacements; and

(vi) If necessary, the establishment of operating reserve escrows including contingencies against unexpected increases in expenses or shortfalls in homeowners' payments.

(3) Upon approval of the homeownership program, the Commissioner and the resident council shall enter into a agreement, which shall include, among other matters, procedures governing the drawdown of funds and remedies for noncompliance with the requirements of this section.

(f) *Method of conversion.* The Commissioner shall approve the method for converting the project to homeownership, which may involve acquisition of ownership interests in, or shares representing, the units in a project under any arrangement determined by the Commissioner to be appropriate, such as cooperative ownership, and fee simple ownership, including condominium ownership.

(g) *Required conditions.* The Commissioner shall require that the form of homeownership impose appropriate conditions, including conditions to assure that:

(1) To the extent practicable, the number of initial owners that are very low, low, and moderate income persons at initial occupancy are of the same proportion of very low, low, and moderate income tenants (including families and persons whose incomes are 95 percent or more of area median income) as resided in the project on January 1, 1987 (or if the January 1, 1987 profile is unavailable, a certification from the owner stating its unavailability and a profile as of January 1, 1988, or, if that is also unavailable, a profile as of

January 1, 1989) or as of the date of approval of the plan of action, whichever date results in the higher proportion of very low income families, except that the resident council may, at its option, increase the proportions of very low income and low income initial owners, however, no current tenant may be denied homeownership as a result of this paragraph;

(2) Projected debt service payments, occupancy charges and utilities payable by the owners shall not exceed 35 percent of the monthly adjusted gross income of the owners;

(3) The aggregate incomes of initial owners and other sources of funds for the project are sufficient to permit occupancy charges to cover the full operating costs of the project and any debt service; and

(4) Each initial owner occupies the unit it acquires for at least the initial 15 years of ownership, unless the resident council determines that the initial owner is required to move outside the market area due to a change in employment or an emergency situation.

(h) *Use of proceeds from sales to eligible families.* The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, may use 50 percent of the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to the project, operating and replacement reserves for the project, additional homeownership opportunities in the project, and other project-related activities approved by the Commissioner. The remaining 50 percent of such proceeds shall be returned to the Commissioner for use under §§ 248.157 and 248.161, subject to the availability of appropriations. Such entity shall keep, and make available to the Commissioner, all records necessary to calculate accurately payments due the Commissioner under paragraph (h) of this section.

(i) *Restrictions on resale by homeowners.* Resale of a homeowner's interest in a project with an approved homeownership program may occur subject to any reasonable restrictions placed on such a transfer by the resident council and approved by the Commissioner.

(1) *Transfer permitted.* A homeowner may transfer the homeowner's ownership interest in the unit, subject to the right to purchase under paragraph (i)(2) of this section, the requirement for the purchaser to execute a promissory note, if required under paragraph (i)(3) of this section and the restrictions on

retention of sales proceeds in paragraph (k) of this section. An applicant may propose in its application, and HUD may approve, reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.* Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, it shall have the right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. Where a resident management corporation, resident council, or a cooperative exercises a right to purchase, it shall resell the unit to an eligible family within a reasonable period of time.

(3) *Promissory note required.* At closing, the initial homeowner shall execute a nonrecourse promissory note for a term of twenty years, in a form acceptable to HUD, equal to the difference between the fair market value of the unit and the purchase price, payable to the Commissioner, together with a mortgage securing the obligation of the note.

(i) With respect to a sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt incurred in connection with the purchase of the property, paying any other amounts due in connection with the sale, including closing costs and transfer taxes, and paying the family the amount of its equity in the property, computed in accordance with paragraph (k) of this section.

(ii) With respect to a sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (k) of this section. Any excess is distributed as provided in paragraph (1) of this section.

(iii) With respect to a sale by an initial homeowner six to twenty years after acquisition, the amount payable under the note shall be reduced by 1/168th of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

(j) *Execution of promissory note by subsequent purchaser.* Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount. The term of the

promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt incurred in connection with the purchase of the property, and paying any other amounts due in connection with the sale (such as closing costs and transfer taxes). The amount payable on the note shall be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note that the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(k) *Homeowners' equity.* The amount of equity an initial homeowner has in the property is determined by computing the sum of the following:

(1) The contribution to equity paid by the family, if any, including any down payment and any amount paid towards principal on a mortgage loan during the period of ownership;

(2) The value of any improvements installed at the expense of the family during the family's tenure as owner, as determined by the resident council based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(3) The appreciated value, determined by applying the Consumer Price Index (urban consumers) against the contribution to equity under paragraphs (k) (1) and (2) of this section, excluding the value of any sweat equity or volunteer labor used to make improvements to the unit. The resident council may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(l) *Use of recaptured funds.* Any net sales proceeds that may not be retained by the homeowner under the homeownership program approved under this section shall be paid to the HOME Investment Trust Fund for the unit of general local government in which the project is located. If the project is located in a unit of general local government that is not a participating jurisdiction, as such term is defined in § 248.101, any such net sales proceeds shall be paid to the HOME Investment Trust Fund for the State in which the project is located. With respect to any proceeds transferred to a HOME Investment Trust Fund under paragraph (1) of this section, the Commissioner shall take such actions as

are necessary to ensure that the proceeds shall be immediately available for eligible activities to expand the supply of affordable housing under section 212 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. 12742). The Commissioner shall monitor the HOME Investment Trust Fund for each State and unit of local government and shall require maintenance of any records necessary to calculate accurately payments due under this paragraph (1) of this section.

(m) *Protection of nonpurchasing families.* Nonpurchasing families who continue to reside in a project subject to a homeownership program approved under this section shall be protected as follows:

(1) *Eviction.* No tenant residing in an eligible property on the date the Commissioner approves a plan of action may be evicted by reason of a homeownership program approved under this section. This does not preclude evictions for material violation of the terms of occupancy of the unit.

(2) *Section 8 assistance.* If a tenant decides not to purchase a unit, or is not qualified to do so, the Commissioner shall ensure that assistance under parts 882 or 887 of this title is available for use in that or another property by each tenant that meets the eligibility requirements thereunder.

(3) *Rent increases for ineligible tenants.* Rents for tenants who do not purchase a unit but are ineligible for assistance under paragraph (m)(2) of this section may be increased to a level that does not exceed 30 percent of the tenant's adjusted income or the section 8 existing fair market rent, whichever is lower. Rent increases shall be phased in in accordance with § 248.145(a)(6).

(4) *Relocation assistance.* The resident council shall also inform each tenant that if the tenant chooses to move, the resident council, as owner of the project, will pay relocation expenses in accordance with the approved homeownership program. The provisions of § 248.165 shall not apply to resident councils who are project owners pursuant to an approved homeownership program under this section.

(n) *Qualified management.* As a condition of approval of a homeownership program under subpart B of this section, the resident council shall have demonstrated its abilities to manage eligible properties by having done so effectively and efficiently for a period of not less than three years or by entering into a contract with a qualified management entity that meets such standards as the Commissioner may

prescribe to ensure that the project will be maintained in a decent, safe and sanitary condition.

(o) *Timely homeownership.* The resident council shall acquire ownership of the project no later than 90 days after final approval of a plan of action pursuant to this section. The resident council shall transfer ownership of units in the project (other than units occupied by nonpurchasing tenants) to the tenants within a reasonable time thereafter, but in no event more than 4 years from the date of transfer of the project to the resident council. The Commissioner may seek contractual remedies against any resident council which fails to transfer ownership of all units within the 4-year period. During the interim period when the project continues to be operated and managed as rental housing, the resident council shall utilize written tenant selection policies and criteria that are approved by the Commissioner as consistent with the purpose of providing housing for very low income families. The resident council shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(p) *Housing standards; inspections.* (1) Until the resident council has transferred all units in the project (other than those occupied by nonpurchasing tenants) to the initial purchasers, the project shall be maintained in accordance with the housing standards set forth in § 248.147.

(2) The Commissioner shall inspect the project at least annually in order to determine compliance with paragraph (p)(1) of this section.

(q) *Audits.* Each resident council shall be subject to the audit requirements in part 45 of this title and shall submit an annual audit to the Commissioner in such form as the Commissioner may prescribe. The resident council shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such resident council of the proceeds of assistance received under subpart B of this part, including any proceeds from sales under paragraphs (h) and (i) of this section, the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

The Commissioner or his or her duly authorized representative shall have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under subpart B of this part.

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access, for the purpose of audit and examination, to any books, documents, papers, and records of the resident council that are pertinent to assistance received under subpart B of this part.

(r) *Reports.* The resident council shall submit reports, as required by the Commissioner, in order to demonstrate continued compliance with the requirements of this section.

(s) *Assumption of the Federally-assisted mortgage.* The resident council may not assume a mortgage insured, held or assisted by the Commissioner under part 236 of this chapter or under part 221 of this chapter and bearing a below market interest rate as provided under § 221.518(b) of this chapter.

§ 248.175 Resident homeownership program—limited equity cooperative.

(a) Tenants may carry out a resident homeownership program through the purchase of eligible low income housing by a limited equity cooperative and the operation of the project as a limited equity cooperative.

(b) The purchase of a project by a limited equity cooperative and the operation of the project by the limited equity cooperative shall be carried out in accordance with the provisions of § 248.173 (a), (b), (c), (d), (except that paragraph (d)(i) of paragraph (d) shall include a statement of the amount of grant funds and the amount and type of incentives requested, rather than only the amount of grant funds requested), (e), (g)(3), (h), (i) (except paragraphs (i) (1) and (3)), (m), (n) and (o).

(c) The purchase and operation of eligible low income housing by a limited equity cooperative under this section shall be carried out in accordance with all provisions of subpart B of this part otherwise, applicable to the transfer and operation of a project with continued low income affordability restrictions, except as provided in this section.

§ 248.177 Delegated responsibility to State agencies.

(a) *In general.* The Commissioner shall delegate some or all responsibility for implementing subpart B of this part to a State housing agency if such agency submits a preservation plan acceptable to the Commissioner.

(b) *Approval.* State preservation plans shall be submitted in such a form and in accordance with such procedures as the Commissioner shall establish. The Commissioner may approve plans that contain:

(1) An inventory of low income housing located within the State that is or will be eligible low income housing under subpart B of this part within five years;

(2) A description of the agency's experience in the area of multifamily financing and restructuring;

(3) A description of the administrative resources that the agency will commit to the processing of plans of action in accordance with subpart B of this part;

(4) A description of the administrative resources that the agency will commit to the monitoring of approved plans of action in accordance with subpart B of this part;

(5) An independent analysis of the performance of the multifamily housing inventory financed or otherwise monitored by the agency;

(6) A certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) that the proposed activities are consistent with the approved housing strategy of the State within which the eligible low income housing is located; and

(7) Such other certifications or information that the Commissioner determines to be necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of subpart B of this part.

(c) *Implementation agreements.* The Commissioner may enter into any agreements necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of subpart B of this part.

(d) *Fees.* Any State agency with responsibility so delegated under subpart B of this part may not charge any owner of eligible low income housing any fee for accepting notices of intent, processing plans of action or any other process pursuant to approval of a plan of action under subpart B of this part. This prohibition shall not preclude:

(1) An owner paying for its appraisal or share of a joint appraisal under the provisions of § 248.111; or

(2) A State agency from collecting fees normally associated with providing and processing financing insured under part 241 of this chapter.

§ 248.179 Consultation with other interested parties.

The Commissioner shall confer with any appropriate State or local government agency to confirm any State

or local assistance that is available to achieve the purposes of subpart B of this part and shall give consideration to the views of any such agency when making determinations under subpart B of this part. The Commissioner shall also confer with appropriate interested parties that the Commissioner believes could assist in the development of a plan of action that best achieves the purposes of subpart B of this part.

§ 248.181 Notice to tenants.

Except as provided in §§ 248.105 and 248.133, with respect to the first and second notices of intent, with regard to all provisions of subpart B of this part which mandate that information or material be given to the tenants, by the Commissioner, the owner, or a qualified purchaser, or other party, this requirement shall be satisfied where the notifying entity:

(a) Posts a copy of the information or material in readily accessible locations within each affected building, or posts notices in each location describing the information or material and specifying a location, as convenient to the tenants as is reasonably practical, where a copy may be examined and copied during reasonable hours; and

(b) Supplies a copy of the information or material to a tenant representative, if any.

§ 248.183 Preemption of State and local laws.

(a) *In general.* No State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that:

(1) Restricts or inhibits the prepayment of any mortgage described in § 248.101 or the voluntary termination of any insurance contract pursuant to § 207.253 of this chapter on eligible low income housing projects;

(2) Restricts or inhibits an owner of such projects from receiving the authorized annual return provided under § 248.121;

(3) Is inconsistent with any provision of subpart B of this part, including any law, regulation, or other restriction that limits or impairs the ability of any owner of eligible low income housing to receive incentives authorized under subpart B of this part, including authorization to increase rental rates, transfer the project, obtain secondary financing, or use the proceeds of any such incentives; or

(4) In its applicability to low income housing is limited only to eligible low income housing for which the owner has prepaid the mortgage or terminated the insurance contract.

(b) *Effect.* Any law, regulation or restriction described in paragraph (a) of this section shall be ineffective and any eligible low income housing exempt from the law, regulation, or restriction, only to the extent that it violates the provisions of this section.

(c) *Law of general applicability; contractual restrictions.* This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provisions of subpart B of this part and relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both projects receiving Federal assistance and nonassisted projects. This section shall not preempt, annul, or alter any contractual restrictions or obligations existing before November 28, 1990 or voluntarily entered into by an owner of eligible low income housing on or after that date, and that limit or prevent that owner from prepaying the mortgage on the project or terminating the mortgage insurance contract.

15a. The subpart heading for newly designated subpart C is revised to read as follows:

Subpart C—Prepayment and Plans of Action Under the Emergency Low Income Preservation Act of 1987

16. In § 248.213, paragraph (b)(9) is redesignated as paragraph (b)(10) and a new paragraph (b)(9) is added to read as follows:

§ 248.213 Plan of action.

(b) ***
(9) A list of any waivers requested by the owner pursuant to § 248.7 of this part; and

17. Section 248.221 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 248.221 Approval of a plan of action that involves termination of low income affordability restrictions.

(c) There are no open audit findings, open findings of noncompliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601–3619); Executive Order 11063 (3 CFR 1959–1963 comp., p. 652); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); section 504 of the Rehabilitation Act of 1973 (29 U.S.C.

794); and all regulations promulgated under such statutes and authorities (including, but not limited to, 24 CFR part 100), or outstanding violations of the regulatory agreement.

(d) Any plan of action approved under this section shall specify actions that the Commissioner and the owner shall take to ensure that tenants displaced as a result of the termination of low income affordability restrictions are relocated to affordable housing.

18. Section 248.233 is amended by adding a new paragraph (f) to read as follows:

§ 248.233 Approval of a plan of action that includes incentives.

(f) The Commissioner shall not approve a plan of action under this section if there are open findings of noncompliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601–3619); Executive Order 11063 (3 CFR 1959–1963 comp., p. 652); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and all regulations promulgated under such statutes and authorities, or if there are open audit findings with respect to violations of the regulatory agreement.

19. In § 248.234, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 248.234 Section 8 rental assistance.

(c) The approved plan of action shall specify actions that the Commissioner and the owner shall take to ensure that any tenants displaced as a result of actions taken under paragraph (b) of this section are relocated to affordable housing.

§ 248.235 [Removed]

20. Section 248.235 is removed.

20a. A new subpart D (consisting of §§ 248.300 through 248.319) is added to read as follows:

Subpart D—State Preservation Project Assistance

- 248.300 General.
- 248.301 Initial application.
- 248.303 Approval of a State agency's initial application.
- 248.305 Applicability of subpart B of this part.
- 248.307 Authority to process and approve notices of intent and plans of action.
- 248.311 Notice of intent.
- 248.315 Preservation agreements.
- 248.319 Application for assistance.

Subpart D—State Preservation Project Assistance**§ 248.300 General.**

Upon application by a State agency or a local public housing agency, the Commissioner may make available assistance for use in preventing the loss of housing affordable for low and moderate income families that is assisted under a State program under the terms of which the owner may prepay a State assisted or subsidized mortgage on such housing.

§ 248.301 Initial application.

A State agency shall make an initial application to the Commissioner which:

(a) Describes the manner by which the State housing program provides mortgage assistance or subsidy to private mortgagors to provide housing opportunities for low and moderate income families;

(b) Includes copies of the authorizing legislation, any implementing regulations and any administrative guidance provided to owners;

(c) Includes a comprehensive description of the terms and conditions under which a private owner may prepay the assisted or subsidized mortgage without the prior consent of the State agency;

(d) Includes a complete set of pro forma mortgage and/or regulatory documents which evidence an owner's ability to prepay the assisted or subsidized mortgage without the consent of the State agency;

(e) Includes a list of all properties assisted under the State or local housing program whose owners are eligible to prepay the assisted or subsidized mortgages without the consent of the State agency.

§ 248.303 Approval of a State agency's initial application.

(a) The Commissioner will evaluate the State agency's application and will notify the State agency within 90 days of receipt that the program and properties qualify under subpart D of this part or that the program and properties do not qualify under subpart D of this part.

(b) If the Commissioner determines that the program and projects do not qualify under subpart D of this part, it will state the reasons why the program and properties do not qualify and will give the State agency an opportunity to provide additional information, as the Commissioner determines, which would assist the Commissioner in qualifying the program and properties.

§ 248.305 Applicability of subpart B of this part.

The provisions of subpart B of this part shall be applicable to any application of a State agency or local housing authority for assistance under subpart D of this part, except the following provisions:

Sec.

- 248.103 General prepayment limitation.
- 248.105 Notice of intent.
- 248.131 Information from the Commissioner: Only paragraph (a).
- 248.141 Criteria for approval of a plan of action involving prepayment and voluntary termination.
- 248.153 Incentives to extend low income use: Only paragraphs (a)(7), (d) and (e).
- 248.165 Assistance for displaced tenants.
- 248.169 Permissible prepayment or voluntary termination and modification of commitments.
- 248.173 Resident homeownership program: Only paragraph (s).
- 248.177 Delegated responsibility to State agencies.

§ 248.307 Authority to process and approve notices of intent and plans of action.

(a) *Delegation of authority.* State agencies which regulate or otherwise supervise owners of projects with State assisted or subsidized mortgages shall have the authority, reserved to the Commissioner under subpart B of this part, to process and approve all notices of intent and plans of action submitted to the State agency or local housing authority under subpart D of this part. State agencies may redelegate such authority to local housing authorities at their discretion.

(b) *Designation of processing agency.* The Executive Director of the State agency whose State assisted or subsidized mortgage program has been approved under § 248.303 shall inform all owners of projects with State assisted or subsidized mortgages that the State agency or a designated local housing authority shall accept and process notices of intent and plans of action.

§ 248.311 Notice of intent.

(a) *Eligibility for filing.* An owner of a project with a State assisted or subsidized mortgage intending to extend the low income affordability restrictions of the housing in accordance with § 248.153 or transfer the housing to a qualified purchaser under § 248.157 may file a notice of intent.

(b) *Filing with the State agency.* The notice of intent shall be filed with the agency specified in § 248.307(b) or the agency which regulates or otherwise supervises the State assisted or subsidized mortgage. The notice of intent shall also request the tenants to

notify the owner and the State agency of any individual or organization that has been designated or retained by the tenants to represent the tenants with respect to the actions to be taken under subpart B and subpart D of this part.

(c) *Filing with HUD, mortgagee and tenants.* The owner simultaneously shall file the notice of intent with the local HUD field office having jurisdiction over the area in which the project is located and with the mortgagee, if any. In addition, the owner shall deliver a copy of the notice of intent to each tenant in the project and to any tenant representative, if any, known to the owner, and shall post a copy of the notice of intent in readily accessible locations within each affected building of the project. The copies of the notice of intent delivered to the tenants and the tenant representative shall include a summary of possible outcomes of the filing which shall be furnished by the State agency. Upon the request of any non-English speaking tenants residing in the affected project, the owner shall tabulate the number and type of translations needed by the tenants and request the State agency to provide the appropriate translations. The owner shall deliver a copy of the translated notice of intent to all of the tenants who requested such a translation. The failure of an owner to comply with any non-federal notice requirements shall not invalidate the notice of intent.

§ 248.315 Preservation agreements.

(a) *Agreements required.* Owners of projects with State assisted or subsidized mortgages whose plans of action have been approved under § 248.307 shall enter into agreements, contracts and/or mortgage modifications with the State agency or local housing authority to maintain the housing as affordable to tenants in accordance with § 248.145. Such agreements may provide for the renewal of any assistance made available under § 248.319(c).

(b) *Term of agreement.* Preservation agreements shall be coterminous with the expiration of any assistance provided under § 248.153 and made available in accordance with § 248.319(c).

§ 248.319 Application for assistance.

(a) *Application for assistance.* State agencies or local housing authorities shall submit an application for assistance in a form prescribed by the Commissioner with the local HUD field office having jurisdiction over the project. The application shall include:

(1) A copy of the approved plan of action, including all applicable notices of intent;

(2) A copy of any worksheet or other document which demonstrates the extension and transfer preservation values of the project, the Federal cost limits (including the determination of relevant local market rents if applicable), and the preservation rents;

(3) A request for each incentive required as part of the approved plan of action and the amount thereof;

(4) A demonstration and certification by the Executive Director of the State agency or local housing authority that the assistance and incentives requested as part of the approved plan of action do not exceed the level of incentives required for a similarly situated project which is eligible low income housing as defined in subpart B of this part;

(5) Copies of proposed agreements, contracts and mortgage modifications proposed pursuant to § 248.315.

(b) *Notification of approval.* Not later than 90 days after receipt of the application for assistance, the local HUD field office shall notify the Executive Director of the State agency or local housing authority of the approval or disapproval of the application. If the application is disapproved, the notification shall state the reasons therefor and afford the State agency or local housing authority the opportunity to revise the application to make it approvable.

(c) *Funding.* After approving the State agency's or local housing authority's application for assistance, the HUD field office shall make the assistance in the approved application available to the State agency or local housing authority

within the time frames specified in § 248.169.

(d) *Agreements.* The State agency or local housing authority shall provide the local HUD field office with a copy of all agreements entered into with the owner pursuant to § 248.315.

(e) *Section 8 contract administration.* Any contract for Section 8 assistance made pursuant to the approved plan of action, the State agency's or local housing authority's application for assistance and the regulations at 24 CFR 886, subpart A shall be administered by the State agency or local housing authority pursuant to § 886.120 of this title.

Dated: March 6, 1992.

Jack Kemp,
Secretary.

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**Wednesday
April 8, 1992**

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

**Preservation of Multifamily Assisted
Rental Housing: Interim Guidelines for
the Section 222(e) Windfall Profits Test;
Notice**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3382; FR-3177-N-01]

Preservation of Multifamily Assisted Rental Housing: Interim Guidelines for the Section 222(e) Windfall Profits Test

AGENCY: Office of the Assistant Secretary for Policy Development and Research, and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of interim guidelines and request for public comment.

SUMMARY: On May 2, 1991 the Department published a proposed rule entitled "Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing" designed to implement the Low-Income Housing and Resident Homeownership Act of 1990 (The 1990 Act). In conjunction with this proposed rule, HUD has developed written guidelines to carry out the windfall profits test required under section 222(e) of the 1990 Act. The purpose of this notice is to announce the standards that will be used for making "windfall profit" determinations in accordance with the statute, and to afford opportunity for public comment which HUD will take into consideration in developing and implementing final windfall profits guidelines.

DATES: Effective date: These interim guidelines shall become effective May 8, 1992. The effective date of this notice may be postponed if the Department is unable, on or before that date, to publish a companion document, the final Guidelines for Determining Appraisals of Preservation Value under the Low Income Housing Preservation and Resident Homeownership Act of 1990. (The proposed Appraisal Guidelines were published for notice and comment on December 12, 1991 at 56 FR 64932.)

Comment due date: All written comments must be received on or before June 8, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding these guidelines to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will

be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce D. Atkinson, Office of Economic Affairs, room 8222, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, voice: (202) 708-0590; TDD (202) 708-0770. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VI of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, enacted November 28, 1990, contains the Low Income Housing Preservation and Resident Homeownership Act of 1990 (the "1990 Act").

The 1990 Act provides the Secretary of HUD with permanent authority to deal with HUD-assisted multifamily projects where owners have the option of prepaying their mortgage loans. Its basic objectives are to assure that most of the "prepayment" inventory of HUD-assisted housing remains affordable to low-income households and to provide opportunities for tenants to become homeowners, while at the same time fairly compensating owners for the value of their properties. A proposed rule for implementing the 1990 Act was published in the *Federal Register* on May 2, 1991 under the title "Prepayment of a HUD-Insured Mortgage by an Owner of Low-Income Housing" (56 FR 20262). The Department provided for a 60-day period after the publication of the proposed rule for the submission of public comments (until July 1, 1991).

Section 222(e) of the 1990 Act reads as follows:

(e) **WINDFALL PROFITS.**—The Secretary shall submit a report to the Congress not later than 90 days after the enactment of the Cranston-Gonzalez National Affordable Housing Act, evaluating the availability, quality, and reliability of data to measure the accessibility of decent, affordable housing in all areas where properties are eligible to submit a notice of intent to prepay under section 212. To prevent payment of windfall profits, the Secretary may make available incentive payments under section 219 or 220 only to owners in those rental markets where there is an inadequate supply of decent, affordable housing, if the Secretary determines that adequate data can be obtained to permit objective and fair implementation or where necessary to accomplish the other public policy objectives under this subtitle. The Secretary shall implement this subsection in a manner consistent with the process established by this subtitle.

The purpose of this notice is to publish HUD's interim windfall profit guidelines for effect, and to provide opportunity for public comment upon

the guidelines preparatory to their republication in final form.

Section 222(e) specifies that "to prevent payment of windfall profits", the Secretary may make available incentive payments under section 219 or 220 only to owners in those rental markets where there is an inadequate supply of decent, affordable housing, if the Secretary determines that adequate data can be obtained to permit objective and fair implementation or where necessary to accomplish the other public policy objectives (under title VI subtitle A). The statute reflects the concern that "the preservation solution should not be used to provide incentives to owners who would not have prepaid, given local market conditions." House Conference Report to the Cranston-Gonzalez National Affordable Housing Act, Conf. Rep. No. 101-943, 101st Cong., 2nd Sess. p. 469.

Section 222(e) also required the Department of Housing and Urban Development to submit an evaluation of the "availability, quality and reliability of data to measure the accessibility of decent affordable housing in all areas where properties are eligible to submit a notice of intent to prepay." This evaluation was delivered to the Congress on April 4, 1991 and is available for examination and copying by the public at the office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development. The Department found that adequate data can be obtained to permit the objective and fair implementation of the type of test required by section 222(e).

The Department believes that these guidelines are appropriate for publication for immediate effect, in advance of public comment, because the nature and scope of the guidelines already have been the subject of congressional examination at the time the above-noted report to the Congress was made, and because the report (which was available to the public) has itself been the subject of numerous comments, which were consulted during the development of this document.

It is critical that the windfall profit guidelines be made effective at the outset of the effectiveness of the new Prepayment regulation, because the mechanisms described in this document are integrally related to the prepayment process described in that related regulation. Nevertheless, the Department expects promptly to republish these guidelines in their final form following additional public comment, so that the great majority of prepayment applicants will be subject to

the application of guidelines developed following full public comment.

Procedural Matters

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this issuance would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The guidelines would be used as an adjunct to regulations implementing the Low Income Housing and Resident Homeownership Act of 1990—legislation designed to preserve and enhance housing opportunities for lower income families.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in these guidelines will not have federalism implications when implemented and, thus, are not subject to review under the Order. These guidelines do not change in any way existing relationships between HUD, the States, or local governments.

Dated: March 6, 1992.

John C. Weicher,

Assistant Secretary for Policy Development and Research.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

Preservation of Multifamily Assisted Rental Housing: Guidelines for the Section 222(e) Windfall Profits Test

Summary

This document sets forth HUD's procedures and standards for implementing the windfall profits test in section 222(e) of subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101-625 approved November 28, 1990), entitled the "Low Income Housing Preservation and Resident Homeownership Act" ("title VI"). Title VI replaces the Emergency Low Income Housing Preservation Act of 1987 ("title II") with a comprehensive program governing the prepayment of mortgages insured or assisted under the National Housing Act. Regulations for title VI are contained in 24 CFR part 248. One part of the program enacted by Congress to deal with prepayments is a windfall profits test as set forth in section 222(e). This document explains how HUD will implement this requirement.

Background

Title VI creates a permanent and comprehensive program to preserve privately-owned low income housing projects while not unduly restricting the owner's mortgage prepayment rights. Section 218 allows owners of projects subject to low-income affordability restrictions to terminate these restrictions by prepaying their HUD-insured mortgage subject to certain statutory constraints: Prepayment may occur only if it does not result in a material increase in economic hardship for current tenants and only in localities where prepayment will not materially affect the availability of decent, safe, and sanitary housing affordable to low-income and very low-income families. Sections 219 and 220 provide incentives to owners to maintain the low income affordability restrictions for the remaining useful life of their projects or to transfer the property to other entities which agree to continue the low income affordability restrictions.

Section 222(e) specifies that "to prevent payment of windfall profits, the Secretary may make available incentive payments under section 219 or 220 only to owners in those rental markets where there is an inadequate supply of decent, affordable housing, if the Secretary determines that adequate data can be obtained to permit objective and fair implementation or where necessary to accomplish the other public policy objectives" (under title VI, subtitle A). The statute reflects the concern that "the preservation solution should not be used to provide incentives to owners who would not have prepaid, given local market conditions." House Conference Report to the Cranston-Gonzalez National Affordable Housing Act, Conf. Rep. No. 101-943, 101st Cong., 2nd Sess. p. 469.

Section 222(e) also required the Department of Housing and Urban Development to submit an evaluation of the "availability, quality and reliability of data to measure the accessibility of decent affordable housing in all areas where properties are eligible to submit a notice of intent to prepay." This evaluation was delivered to the Congress on April 4, 1991. The Department found that adequate data can be obtained to permit the objective and fair implementation of the type of test required by section 222(e).

Windfall Profits Test

This section describes HUD's proposed windfall profits test and explains why HUD has constructed the test in this manner. The section that follows discusses the procedure HUD

will use to carry out the windfall profits test as part of the overall process related to title VI.

In carrying out the requirement of section 222(e), the Department observed that Congress identified three distinct concerns. First, the language in the conference report, quoted above, speaks about the concern that benefits might be made available in cases where an abundant supply of market rate rental housing would not make prepayment profitable. This language describes situations in which supply exceeds demand in rental markets so that returns to new or newly converted market rate rental units are below average. In underwriting mortgages for FHA insurance, these situations are referred to as "soft markets". In general, incentives would not be needed in these markets to prevent prepayment. Second, the statute speaks about the "accessibility of decent, affordable housing" and an "inadequacy of the supply of decent, affordable housing." The Department interprets these two phrases to encompass the same concept, that is, markets where housing is inexpensive relative to income. In these markets, incentives are not needed as long as the tenants directly affected will be protected. The reduction in the number of units of assisted housing should have little impact on unassisted low-income tenants because of the accessibility of affordable housing. Third, the statute speaks about making incentives available to owners, regardless of the adequacy or accessibility of the supply of housing, where necessary to accomplish the other public policy objectives under title VI.

The Department recognizes that these conditions may be distinct. A market may have an abundant supply of market-rate housing of the type the project would compete with (i.e., be a soft market), but have a limited supply of housing affordable to low-income families. A market may also have a supply of housing that is both abundant and accessible, but because of the special circumstances of a particular project, incentives are justified in order to preserve the housing, e.g., the project is the only source of low-income rental housing in the immediate area or there is a shortage of the particular type of rental housing provided by the project such as units suitable for the elderly, disabled, or for large families.

Because three distinct concepts are involved, two dealing with market area wide factors of affordability and availability, and one about the uniqueness of a special project, the Department has determined that a three-

part test would best carry out the intent of the legislation. A project would be denied eligibility to apply for incentives only if the requisite conditions under both parts of the market area test are satisfied and the Department has further determined that incentives to the particular project are not necessary to accomplish other public policy objectives under title VI.

The first part of the test focuses on the accessibility of affordable rental housing. HUD will identify those market areas where rental housing is relatively more affordable, and therefore relatively more accessible, in relation to other areas in the country. This determination uses the ratio of the most recent Section 8 Existing Fair Market Rent ("FMR") for a two-bedroom unit for the area (pursuant to section 8(c) of the United States Housing Act of 1937) to the rent affordable by a four person family with an annual income equal to fifty percent (.50) of the area median family income, assuming the family uses thirty percent (.30) of income for gross rent. The median family incomes are based on estimates developed by the Department (pursuant to section 3 of the United States Housing Act of 1937). Fifty percent of median is, in general, the federal definition of very low income for families seeking admission to assisted housing.

Mathematically, the ratio is expressed as the following fraction:

Local Fair Market Rent

$$(.5) * (\text{Local median annual income}/12) * (.3)$$

This ratio examines affordability directly by comparing the two factors which determine affordability, rent levels and income levels. Families of four are eligible for most assisted housing programs if their incomes are below 50% of median income. In some cases, program rules allow higher income families to qualify. Only rarely are income limits set below 50% of median income. The denominator of the fraction measures what rent a family of four, on the borderline of eligibility for assisted housing, would be able to afford spending 30% of its monthly income for rent and utilities (affordable rent). (In almost all assisted housing programs, the Federal government requires most families to contribute 30% of their income, after adjustments, for rent.) The numerator is HUD's estimate of the cost (rent plus utilities) of the two-bedroom rental unit at the 45th percentile of the rent distribution (Fair Market Rent). This means that 45% of

the standard-quality, two-bedroom units cost less for rent and utilities than the local Fair Market Rent.

If this ratio is equal to 1 in a locality, then a family of four on the borderline of eligibility for assisted housing would be able to afford a unit renting at the Fair Market Rent from its own resources. (Because, as explained later, HUD makes adjustments to the fifty percent of median figure when setting its very low income eligibility standards, such a family would be well within the limits for admission to assisted housing in many localities.) This family would be able to afford 45% of all two-bedroom units without spending more than 30% of its income for rent. In a majority of cases, this family would spend less than 30% of its income. If the ratio is less than 1 in a locality, then the borderline four-person family would be able to afford more than 45% of the standard-quality two-bedroom units. The opposite is true for localities where the ratio is greater than one. In these places, the borderline four-person family would be able to afford less than 45% of the standard-quality two-bedroom units. Thus, if all localities were ranked by this ratio, localities with lower ratios would be places where housing is more affordable.

In carrying out the first part of the Windfall Profits Test, HUD will calculate the ratio of market rent (the most recent section 8 Existing FMR) to affordable rent (the rent affordable by a four person family with an annual income equal to fifty percent (.50) of the area median family income) for all metropolitan areas and all nonmetropolitan counties. The ratios for the metropolitan and nonmetropolitan areas will then be arrayed separately in rank order from lowest to highest.

This process will produce a relative ranking of localities with respect to the affordability of housing. Localities with low ratios have rental housing which is relatively more affordable than localities with high ratios. However, some dividing line has to be established such that localities whose ratios fall below that line will be considered to have affordable housing in the sense of this statutory requirement. This is difficult, because there is no agreed-upon definition of what constitutes "affordable housing" for a market perspective.

In order to see if the data provide information on where to establish the dividing line, HUD graphed the ratios from lowest to highest. The results evidenced no obvious break point. Except for the very lowest and very highest ratios, the ratios for both

metropolitan and non-metropolitan areas follow approximately a straight line from lowest to highest.

There may be no single definition of "affordable housing" from a market perspective; however, a generally accepted definition does exist from an individual perspective. A 30% rent-to-income ratio has become accepted as constituting a reasonable expenditure on housing for an individual family. As stated previously, in almost all assisted housing programs, the Federal government requires families to contribute 30% of their income, after adjustments, for rent.

A ratio of 1 provides a reasonable safety check for affordability. As noted earlier, when the ratio is 1, a family earning 50% of median income can afford to rent up to 45% of all standard quality, two-bedroom units by spending no more than 30% of its income on rental costs. To provide a further check of affordability, areas with ratios at or less than one (1.0) that have unusually high Fair Market Rents would be eliminated. Therefore, HUD proposes that the list of affordable areas will be comprised of those areas whose ratios do not exceed one (1.0) and whose two-bedroom Fair Market Rents do not exceed 120% of the national average Fair Market Rent for a two-bedroom unit. The result of the first measure is the list, in appendix 1, of Metropolitan Statistical Areas (MSAs) and nonmetropolitan counties where rental housing was determined to be relatively affordable. This list will be updated by the Department annually.

Being on the list means only that rental housing in that particular area is relatively more affordable and therefore potentially more accessible, in relation to other areas in the country. The fact that an area is not on the list does not mean that rental housing is not affordable. In particular, it does not mean that tenant-based assistance (Section 8 certificates and vouchers) will not work in those areas. Moreover, it does not mean that there is any problem with the ability of the market to supply housing in the unlisted areas. The Department believes that freely operating housing markets will respond effectively to demand.

The purpose of the list is to identify those areas where the change from project-based rental assistance to tenant-based assistance should not result in an upward pressure on rents overall. In such areas, tenants affected by prepayment would, with the use of certificates and vouchers, be able to find affordable housing units without adversely raising the overall rents of units available to low income renters.

However, even in communities where housing is relatively affordable, a large change relative to the inventory of housing available may adversely affect the supply of units currently available to and occupied by the unassisted low income renters. Therefore, the Department must also look at the adequacy of the overall supply of rental housing. This analysis of the adequacy of the supply will be covered in the second part of the windfall profits test.

HUD considered other alternatives for designating areas where housing is affordable. These alternatives included (1) the procedures used in designating difficult development areas for purposes of the low-income housing tax credit; (2) Census data on median income and median rents; and (3) information from Comprehensive Housing Affordability Strategies.

LIHTC Difficult Development Areas

The first part of the test is conceptually similar to the procedure used by the Department in designating difficult development areas for the purposes of the low income housing tax credit (LIHTC) under section 42 of the Internal Revenue Code of 1986. The difficult development area approach compares fair market rents to 120% of HUD very low-income limits rather than 50% of actual median income. There are two important differences between HUD very low income limits and 50% of median income. HUD very low income limits are set in each locality so that they are the higher of 50% of local median income or of the state nonmetropolitan median income. HUD very low income limits are also increased in areas with high housing costs. The ratio used for difficult development areas would overestimate affordability in localities where these upward adjustments are made. Therefore, HUD decided not to use the same approach as it uses to designate difficult development areas.

Using the adjusted ratio is appropriate for designating difficult development areas. Congress created the difficult development area distinction to identify places where there might be an inconsistency between the rules governing income eligibility and allowable rent in the low income housing tax credit program. Therefore, the correct comparison in this case is between housing costs and program income limits, rather than actual median income.

Census Data

HUD also compared median rents to median income for the 1980 Census. The results were highly correlated with the

approach which HUD proposes to use. HUD believes that the first part of its test should reflect current market conditions and therefore decided against using data which are available only on a decennial basis.

Comprehensive Housing Affordability Strategies

HUD chose not to use information from the Comprehensive Housing Affordability Strategies (CHAS) submitted by localities and states for several reasons. First, a CHAS submitted by a locality reflects that community's assessment of the needs and conditions only in the locality, and not necessarily in the overall housing market area. Second, a substantial part of the data on housing needs and market conditions that will be the basis of the CHAS will be obtained for the 1990 Decennial Census and will be provided by the Department later this year and in 1993. This information is not immediately available and, once available will become dated as the decade progresses. Third, not all communities where projects would be eligible to prepay may be covered by a CHAS. Under the rules for the CHAS, a state has the option to decide at what geographic level it presents its analysis of housing needs and conditions. Fourth, the CHAS does not specifically require an assessment of the affordability of rental housing. Therefore, the Department could not rely on the CHAS for an objective and fair implementation of the windfall profits test.

The second part of the windfall profits test involves determining whether there is an excess of supply over demand for rental housing in the housing market area. The purpose of this part of the test is to identify those market areas on the above list of places with affordable housing where, given local market conditions, owners would probably not prepay if allowed.

An accurate, timely and objective analysis of the balance between supply and demand of rental housing in a market area requires analysis of the current conditions of the individual market. The analysis must be based on a comprehensive review of the current and anticipated supply and demand factors influencing the rental housing market. Such an analysis requires data on, and consideration of, factors such as the current rental inventory by rent range, recent trends in the occupancy and absorption of rental units, current and anticipated rental construction activity, rental vacancy rates in the area and the current and forecasted number of renter households. The analysis also has to take into consideration such

factors as current and anticipated future employment growth and changes in population and households.

The most comprehensive source of local market data on rental inventories, rents and vacancy rates would be the 1990 Census. But detailed census data for local areas will not be completely available for all areas until 1993 and by this time the market conditions in a particular area may have changed significantly. Some characteristics of the rental housing market, rental inventory and rents for example, can be estimated by updating the census benchmark data; however, many variables, such as rental vacancy rates, require considerable knowledge of current local market conditions in order to be accurately estimated and interpreted. Therefore, the Department will conduct the second part of the windfall profits test using a combination of census and other federally produced data and local data. Determinations will be made on a case-by-case basis by field staff familiar with local market conditions.

Conducting a case-by-case analysis of each individual market area, as the second part of the test, is also consistent with the manner in which HUD will administer other aspects of this legislation, specifically the review of plans of action to prepay in section 218.

The HUD Field Office with jurisdiction over the market area in which a project is located will be responsible for conducting the second part of the windfall profits test. The second part of the test involves the same process and the accepted statistical and analytical methods of housing market analysis that the Department uses in its underwriting of multifamily mortgage insurance and its analyses of project proposals for federal rental assistance. HUD field office staffs routinely monitor rental housing market conditions of the market areas in their jurisdictions, maintaining data bases of current information on housing market conditions, including information on housing supply and demand trends.

As noted earlier, projects are eligible for incentives unless both market-area-wide conditions of the windfall profits test are satisfied. Eligibility to receive incentives will be denied only if (1) a project is located in a market that HUD determined has an adequate supply of affordable housing; and (2) HUD has determined that the market area has an excess supply of rental housing. Even if both conditions are satisfied, a project can still be eligible to receive incentives if the Department determines, in the third part of the test, that provision of

incentives is necessary to achieve other public policy objectives under title VI.

The HUD field office with jurisdiction over the market area in which a project is located will be responsible for conducting the third part of the test. Because this test involves the specific circumstances and composition of each individual project, it will be necessary to conduct a case-by-case analysis. The third part of the test would only be conducted where both market area-wide conditions of the windfall profits test are satisfied. This document defines the public policy objectives to be the local market conditions which would prevent a project from prepaying under section 218(a)(2). Therefore, no project denied the right to prepay under section 218 will also be denied eligibility to apply for incentives.

The three parts of the windfall profits test function together to satisfy both the letter and the spirit of section 222(e) and are consistent with the intent of, and procedures set forth in title VI.

Description of the Procedure

In order objectively and fairly to implement the windfall profit provisions of section 222(e) of subtitle A of title VI, the Department has made two distinct determinations on an area-wide basis: One on the affordability of rental housing and the second on the balance between supply and demand in the rental housing market. If, as a result of these determinations, the Department decides that incentives should not be made available in an area, the Department will examine each project separately to determine whether incentives are justified on the basis of public policy objectives.

The method of carrying out the windfall profits test is as follows:

1. Test of Relatively Affordable Rental Housing

The determination of the relative affordability of rental housing in all areas where properties are eligible to submit a notice of intent to prepay is based on the ratio of the most recent Section 8 Existing Fair Market Rent for a two-bedroom unit for the area (pursuant to section 8(c) of the United States Housing Act of 1937) to the rent affordable (assuming a 30 percent rent-to-income ratio) by a four-person family with an annual income equal to fifty percent (.50) of the area median family income. The median family incomes are based on estimates developed by the Department (pursuant to section 3 of the United States Housing Act of 1937).

a. A ratio of market rent to affordable rent is calculated for all metropolitan areas and all nonmetropolitan counties.

The ratios for the two categories are then arrayed separately in rank order from lowest to highest.

b. Based on the ratios, the Department has developed a list of affordable areas. The list of affordable areas is comprised of those areas (metropolitan areas and nonmetropolitan counties) whose ratios do not exceed one (1.0) and whose two-bedroom Fair Market Rents do not exceed 120% of the national average Fair Market Rent for a two-bedroom unit.

c. The list will be updated by the Department annually.

2. Notification of the Owner of the Windfall Profit Test

Within 10 days of the field office's receipt of the notice of intent to request incentives either to extend low-income use or for transfer to a qualified purchaser, the owner will be notified by the field office whether or not the project is located in a market area on the affordable housing list.

a. If the market area is not on the list, the field office will proceed with sending the owner information under 24 CFR 248.131 (Information from the Commissioner).

b. If the applicable market area is on the list, the field office will also inform the owner that the project may be denied eligibility to receive incentives, depending on the outcome of an assessment of the supply of rental housing (rental market conditions test), unless the field office determines that incentives are justified to meet other public policy objectives.

c. The field office will notify the owner, within 30 working days after the receipt of the notice of intent, of the field office's determinations regarding the rental market condition test and the other public policy objectives. The notification will inform the owner of the Department's decision whether or not the project is eligible to apply for incentives, and will state the reasons for the field office's decision if the project is denied eligibility to receive incentives. If the owner is eligible to apply for incentives, the field office should proceed to send the owner information under 24 CFR 248.131 (Information from the Commissioner).

3. Field Office Conduct of the Rental Market Conditions Test (Soft Market Review)

a. Upon receipt of the owner's notice of intent, the field office will, if the project is located in an area on the affordable housing list, conduct an analysis of the rental market in the housing market area. The analysis will be conducted in accordance with the

general guidelines and content and format outlined in appendix 1 of this document.

b. The determination to deny a project eligibility to receive incentives will be made by the HUD field office, based on its analysis of the conditions in the housing market area and a determination whether other public policy objectives apply.

4. Field Office Determination of Public Policy Objectives

If a project is located in an area on the affordable housing list and the Field Office has determined that the market area has a surplus of rental housing, i.e., the supply of vacant available rental housing significantly exceeds the demand (surplus market), the Field Office will conduct a review to determine whether the project may still be eligible to apply for incentives in order to achieve one or more of the public policy objectives under section 218(a)(2).

The Field Office will have to make a finding that a denial of eligibility to apply for incentives will not materially affect:

a. The availability of decent, safe and sanitary housing affordable to low-income families or persons in the area the housing could reasonably be expected to serve;

b. The ability of low-income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

c. The housing opportunities of minorities in the community within which the housing is located.

Since a project is on the list of areas with relatively affordable housing for low-income families, the finding under paragraph "a." above is more project-specific, i.e., the project represents the only source of low-income rental housing in the immediate area; or there is a shortage of a particular type of rental housing provided by the project such as units suitable for the elderly, disabled, or large families.

5. Duration of Market Review Findings

a. The HUD field office is not required to conduct a market review for each project submitting a notice of intent to request incentives in a particular housing market area. The findings of the market review conducted by the HUD field office upon submission of the first project in a market area are to be considered valid for a period of at least 12 months. Thus, any subsequent project requesting incentives which is located in a market area identified as a soft market within the last 12 months will be denied

eligibility to receive incentives unless the field office determines that incentives are necessary to meet the other public policy objectives stated above.

b. An owner of a project submitting a notice of intent subsequent to the field office's initial soft market review of a particular market area may request that the field office conduct another market review if the owner believes that market conditions have changed. The owner's request must provide sufficient reliable data and market information (see appendix 2 of this document) which evidence that market conditions have changed significantly since the time of the previous review.

BILLING CODE 4210-32-M

Section 222 (e) Windfall Profits Test
Part 1 - Affordable Housing Areas List
NONMETROPOLITAN AREAS

| STATE | COUNTY | COUNTY |
|-------|--------------|-------------|
| AL | BIBB | CHAMBERS |
| | CLARKE | CLAY |
| | ESCAMBIA | FAYETTE |
| | HENRY | LAMAR |
| | MARION | MARSHALL |
| AR | TALLADEGA | TALLAPOOSA |
| | ARKANSAS | ASHLEY |
| | COLUMBIA | CONWAY |
| | FRANKLIN | GRANT |
| | LITTLE RIVER | QUACHITA |
| | UNION | |
| AZ | GREENLEE | |
| CA | COLUSA | |
| CO | ELBERT | |
| CT | HARTFORD | |
| FL | BAKER | |
| | HAMILTON | |
| | SUWANNEE | |
| GA | BACON | |
| | BERTIN | |
| | BULLOCH | |
| | CHARLTON | |
| | COLQUITT | |
| | DECATUR | |
| | EMANUEL | |
| | GLYNN | |
| | HALL | |
| | JASPER | |
| | LAMAR | |
| | LUMPKIN | |
| | MORGAN | |
| | PIERCE | |
| | PUTNAM | |
| | STEPHENS | |
| | TERRELL | |
| | UPSON | |
| | WAYNE | |
| IA | WILKES | |
| | BENTON | |
| | CERRO GORDO | |
| | CLINTON | |
| | FLOYD | |
| | HANCOCK | |
| | IOWA | |
| | LEE | |
| | MARSHALL | |
| | PLYMOUTH | |
| | WASHINGTON | |
| IL | ADAMS | |
| | CLARK | |
| | DE WITT | |
| | FORD | |
| | COUNTY | COUNTY |
| | CHEROKEE | CHEROKEE |
| | CLEBURNE | CLEBURNE |
| | FRANKLIN | FRANKLIN |
| | LEE | LEE |
| | MONROE | MONROE |
| | WASHINGTON | WASHINGTON |
| | BENTON | BENTON |
| | DALLAS | DALLAS |
| | HEMPSTEAD | HEMPSTEAD |
| | POPE | POPE |
| | COLUMBIA | COLUMBIA |
| | JEFFERSON | JEFFERSON |
| | UNION | UNION |
| | BANKS | BANKS |
| | BRANTLEY | BRANTLEY |
| | CAMDEN | CAMDEN |
| | CLINCH | CLINCH |
| | CRISP | CRISP |
| | DOOLY | DOOLY |
| | FRANKLIN | FRANKLIN |
| | GREENE | GREENE |
| | HARRIS | HARRIS |
| | JEFFERSON | JEFFERSON |
| | LINCOLN | LINCOLN |
| | MITCHELL | MITCHELL |
| | OGLETHORPE | OGLETHORPE |
| | POLK | POLK |
| | SCHLEY | SCHLEY |
| | TALBOT | TALBOT |
| | TROUP | TROUP |
| | WARREN | WARREN |
| | WHITFIELD | WHITFIELD |
| | WORTH VISTA | WORTH VISTA |
| | CHICKASAW | CHICKASAW |
| | DES MOINES | DES MOINES |
| | GRUNDY | GRUNDY |
| | HENRY | HENRY |
| | JONES | JONES |
| | MADISON | MADISON |
| | MONTGOMERY | MONTGOMERY |
| | STORY | STORY |
| | WINNEBAGO | WINNEBAGO |
| | CASS | CASS |
| | CRAWFORD | CRAWFORD |
| | EDWARDS | EDWARDS |
| | HANCOCK | HANCOCK |
| | GULF | GULF |
| | LIBERTY | LIBERTY |
| | BARTOW | BARTOW |
| | BRYAN | BRYAN |
| | CARROLL | CARROLL |
| | COFFEE | COFFEE |
| | DAWSON | DAWSON |
| | ELBERT | ELBERT |
| | GLASCOCK | GLASCOCK |
| | HABERSHAM | HABERSHAM |
| | HART | HART |
| | JOHNSON | JOHNSON |
| | LOWNDES | LOWNDES |
| | MONROE | MONROE |
| | PICKENS | PICKENS |
| | PULASKI | PULASKI |
| | SEMINOLE | SEMINOLE |
| | TAYLOR | TAYLOR |
| | TWIGGS | TWIGGS |
| | WASHINGTON | WASHINGTON |
| | WILCOX | WILCOX |
| | CARROLL | CARROLL |
| | CLAY | CLAY |
| | EMMET | EMMET |
| | HAMILTON | HAMILTON |
| | HUMBOLDT | HUMBOLDT |
| | KOSSUTH | KOSSUTH |
| | MARION | MARION |
| | MUSCATINE | MUSCATINE |
| | TAMA | TAMA |
| | WORTH | WORTH |
| | CHRISTIAN | CHRISTIAN |
| | DE KALB | DE KALB |
| | EFFINGHAM | EFFINGHAM |
| | HENDERSON | HENDERSON |

Section 222 (e) Windfall Profits Test
Part 1 - Affordable Housing Areas List
NONMETROPOLITAN AREAS

| STATE | COUNTY | COUNTY | COUNTY |
|-------|----------------|----------------|----------------|
| MD | WEST FELICIANA | | |
| MI | CAROLINE | BARRY | BRANCH |
| | ALLEGAN | GRAND TRAVERSE | IONIA |
| | CASS | ST. JOSEPH | TUSCOLA |
| MN | LENAWEE | | |
| | VAN BUREN | DODGE | FARIBAULT |
| | BROWN | HOUSTON | LAKE |
| | FREEBORN | MARTIN | MCLEOD |
| | LE SUEUR | NOBLES | PENNINGTON |
| | MOWER | RICE | STEELE |
| | POLK | WASECA | WILKIN |
| | WABASHA | | |
| MO | WINONA | AUDRAIN | BATES |
| | ADAIR | CLARK | CLINTON |
| | CALLAWAY | HENRY | LEWIS |
| | COLE | MACON | MARION |
| | LINCOLN | PETTIS | PIKE |
| | NODAWAY | SALINE | STE. GENEVIEVE |
| | RALLS | WEBSTER | LAFAYETTE |
| MS | VERNON | CLAY | TISHOMINGO |
| | CLAIBORNE | SIMPSON | |
| | LAWRENCE | | |
| | WARREN | | |
| MT | RICHLAND | | |
| NC | ANSON | CALDWELL | CAMDEN |
| | CARTERET | CLEVELAND | DARE |
| | EDGEcombe | GRANVILLE | GREENE |
| | HARNETT | HENDERSON | HOKE |
| | IREDELL | LEE | LENOIR |
| | MCDOWELL | MOORE | NASH |
| | PASQUOTANK | POLK | RICHMOND |
| | ROCKINGHAM | SCOTLAND | STANLY |
| | SURRY | VANCE | WASHINGTON |
| ND | WAYNE | | |
| | BILLINGS | MCLEAN | MERCER |
| | OLIVER | RICHLAND | SARGENT |
| | SHERIDAN | STARK | STEELE |
| NE | STUTSMAN | WILLIAMS | |
| | ADAMS | BUTLER | |
| | CHERRY | CUMING | CASS |
| | DAWSON | DODGE | DAWES |
| | HALL | KIMBALL | FILLMORE |
| | MADISON | OTDE | LINCOLN |
| | PHELPS | RED WILLOW | PERKINS |
| OH | SAUNDERS | SHERIDAN | SALINE |
| | ASHLAND | CHAMPAIGN | YORK |
| | COLUMBIANA | CRAWFORD | CLINTON |
| | DEFIANCE | GALLIA | DARKE |
| | HARDIN | HENRY | HANCOCK |
| | HOCKING | LOGAN | HIGHLAND |
| | MERCER | MORROW | MARION |
| | OTTAWA | PERRY | MUSKINGUM |
| | | | PREBLE |

Section 222 (e) Windfall Profits Test
Part I - Affordable Housing Areas List
NONMETROPOLITAN AREAS

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Section 222 (e) Windfall Profits Test
Part 1 - Affordable Housing Areas List
NONMETROPOLITAN AREAS

| STATE | COUNTY | COUNTY | COUNTY | COUNTY |
|-------|----------------|---------------|----------------|--------------|
| WA | CARROLL | CLARKE | CLIFTON | CRAG |
| | CULPEPER | DICKENSON | EMPORIA | ESSEX |
| | FAUQUIER | FRANKLIN | FRANKLIN | FREDERICK |
| | GRAYSON | GREENSVILLE | HALIFAX | HARRISONBURG |
| | HENRY | ISLE OF WIGHT | KING AND QUEEN | KING GEORGE |
| | KING WILLIAM | LANCASTER | LOUISA | LUNENBURG |
| | MARTINSVILLE | MATHEWS | MECKLENBURG | NELSON |
| | NORTHUMBERLAND | NOTTOWAY | ORANGE | PATRICK |
| | PRINCE EDWARD | PULASKI | RAPPAHANNOCK | RICHMOND |
| | ROCKINGHAM | SMYTH | SOUTH BOSTON | SOUTHAMPTON |
| | SPOTSYLVANIA | STAUNTON | SURRY | SUSSEX |
| | WARREN | WAYNESBORO | WESTMORELAND | WISE |
| | WYTHE | COWLITZ | LINCOLN | DOOR |
| | ADAMS | CRAWFORD | DODGE | GREEN LAKE |
| | COLUMBIA | GRANT | GREEN | LAFAYETTE |
| | FOND DU LAC | JEFFERSON | KEWAUNEE | MARQUETTE |
| | IOWA | MANITOWOC | MARINETTE | PIERCE |
| | LINCOLN | ONEIDA | PEPIN | TREMPEALEAU |
| | MONROE | SHAWANO | TAYLOR | WAUSHARA |
| | PORTAGE | WALWORTH | WAUPACA | |
| | VERNON | | | |
| | WOOD | | | |
| WV | BERKELEY | BOONE | LOGAN | MASON |
| | MERCER | MINGO | MORGAN | PLEASANTS |
| | RALEIGH | TYLER | WETZEL | WYOMING |
| | CAMPBELL | CARBON | CONVERSE | FREMONT |
| WY | HOT SPRINGS | JOHNSON | PARK | SWEETWATER |
| | UINTA | WASHAKIE | | |

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Appendix 2

Section 222(e) Windfall Profits Test

Guidelines for Conducting the Rental Market Analysis

1. Definition of the Market Area

For the purpose of the analysis, the housing market area (where housing units of similar characteristics are in relative competition with each other) is defined, in the case of a nonmetropolitan area, as the county in which the project is located. For projects located in metropolitan areas, the market area is generally defined as the entire Primary Metropolitan Statistical Area (PMSA/MSA). (In unusual circumstances, such as the case of very large metropolitan areas, the defined market area may be only a part of the larger area.)

2. Evidence Indicating a Soft Market Condition (Surplus of Rental Housing)

Experience has shown that certain market conditions are indicative of a soft rental market. The existence of one or more of these conditions does not automatically establish the market area as a soft market, but indicates the need for further analysis.

- a. Upward trends in the number of defaults and foreclosures in rental projects and the existence of a large inventory of HUD acquired properties.
- b. Unusually low rents being asked for new units or widespread use of concessions for both new and existing units. Widespread use of short-term leases.
- c. Increases in overall rental vacancy rates and increases in vacancies in existing rental projects which had previously had a history of high occupancy.
- d. Excessive number of vacant rentals (particularly apartments) of particular size, age, project or unit type, or other common characteristic.
- e. Rental vacancy rates of greater than 10 percent overall and 12 percent or more in multifamily rental projects for a sustained period (24 months).
- f. Flat or stable rents in existing projects or rent increases smaller than what could be expected from normal increases in property taxes, utilities, maintenance costs or inflation.
- g. Newly built rental units are being absorbed at a slower rate than in previous periods, vacancies in existing projects are on the market for a longer period, or new units are being absorbed at the expense of existing units.
- h. Significant declines in waiting lists and increases in the size and frequency of advertising.

i. Construction or proposed construction of a substantial number of rental units.

j. Downturns in the local economy, as indicated by declining employment growth, reductions by major employers or increased unemployment or evidence that future growth will not be sufficient to increase demand to levels needed to absorb the supply.

A rental vacancy rate of 10 percent or more should generally be considered excessive for almost all markets, unless the area is experiencing a sustained and rapid rate of growth. In market areas with moderate to low levels of household growth, rental vacancy rates of less than 10 percent may also be considered excessive, especially if the impending increase in supply is significant. A vacancy rate cannot be the sole basis for the soft market determination. The current vacancy situation must be considered in the context of other factors.

3. Extent and Length of Time for Soft Market Conditions

Because a housing market is dynamic, the extent of the surplus condition and the estimated length of time the condition is expected to last are important factors in the identification of a surplus rental market. For the purposes of the windfall profits test an area is considered a soft market if:

- a. There is currently a surplus of rental housing such that the current excess supply of vacant available housing, plus units currently under construction that will enter the market within the next 24 months, is expected to exceed demand for at least the next 24 months; or
- b. The market is anticipated to become a soft market within the next 12 months if, based on the housing production (units currently under construction or with firm planning commitments), in combination with the current supply of available vacant units, supply is expected to exceed demand for at least 24 months.

4. Content of the Analysis

The determination is based on analysis of the current and anticipated conditions in the overall rental market. The analysis takes into account data from the 1990 Decennial Census and the most recent available, locally obtainable data on such factors as: Changes in population, households and employment, the housing inventory, residential construction activity, and recent trends in the absorption of rental housing. A determination of market conditions must be a comprehensive

view of market forces and trends and comprise the following:

- a. Forecasts of employment, incomes, population and household growth and other relevant economic factors.
- b. Estimates of supply and demand taking into consideration marketability factors, such as, the time period necessary to successfully absorb the projects comprising the existing and planned supply.
- c. Analysis of the potential number of units eligible to prepay during the forecast period relative to any excess supply of vacant available housing plus units currently under construction.
- d. Estimates of current and future rental vacancies and vacancy rates.
- e. Evaluation of local market absorption rates in terms of reduction of supply and evaluation of rental absorption experience in the area, so as to determine whether new projects coming on the market are adversely affecting existing inventories, that is, successful occupancy is being achieved at the cost of creating sustained vacancies in existing units.

5. Content and Format of the Soft Market Report

The specific content and length of the soft market report, which will vary depending on the nature of the local market circumstances, are at the discretion of the Field Office staff conducting the review. The staff is not required to submit a lengthy detailed report for a housing market area which it has not identified as having a surplus of rental housing.

The report should be as comprehensive and explicit as needed to assure an understanding of the rationale of the analysis and its conclusions, findings and recommendations. The market analysis review is expected to contain a specific determination of whether the market area is a soft rental market. The report should contain:

- a. A description of the geographic boundaries of the market area for which the determination is being made, including an explanation for the definition based on any relevant characteristics.
- b. An analysis of current market conditions and a forecast of future conditions over the next 24 months, including consideration of the following:
 - (1) The recent trend in household growth and an estimate of growth over the forecast period, comparing the growth to the annual changes in housing production and the current inventory.
 - (2) The current overall rental vacancy rate and a discussion of any specific vacancy problems in the market.

(3) A discussion of recent market experience, including absorption experience of new housing projects, occupancy levels and recent trends in existing projects and a discussion of current rents, recent trends, and anticipated trend, given anticipated market conditions as of the forecast period.

(4) The number of units under construction and the characteristics of these units. The number of units in advanced planning stages, e.g., with building permits or firm financial commitments.

(5) An analysis that reconciles the estimates of annual demand with the forecast of household growth and the

anticipated supply (current vacancy situation and supply of units in production).

(6) A discussion of the length of time the identified market conditions are anticipated to last.

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1. The first part of the report deals with the general situation of the country and the progress of the work during the year. It is divided into two main sections: the first section deals with the general situation of the country and the progress of the work during the year, and the second section deals with the specific results of the work.

2. The second part of the report deals with the specific results of the work. It is divided into three main sections: the first section deals with the results of the work in the field of agriculture, the second section deals with the results of the work in the field of industry, and the third section deals with the results of the work in the field of commerce.

3. The third part of the report deals with the conclusions and recommendations. It is divided into two main sections: the first section deals with the conclusions and the second section deals with the recommendations.

4. The fourth part of the report deals with the appendix. It contains a list of the names of the persons who have taken part in the work, a list of the names of the persons who have given evidence, and a list of the names of the persons who have been consulted.

Federal Register

Wednesday
April 8, 1992

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

**Notice of Final Priorities for Certain New
Direct Grant Awards for FY 1992 and
1993 and Notice Inviting Applications for
New Awards Under Direct Grant
Programs for FY 1992**

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Notice of Final Priorities for Certain New Direct Grant Awards for FY 1992 and 1993 and Notice Inviting Applications for New Awards Under Direct Grant Programs for FY 1992

AGENCY: Department of Education.

ACTION: Notice of final priorities for certain new direct grant awards.

SUMMARY: The Secretary announces final priorities for fiscal years 1992 and 1993 for the following:

Early Education Program for Children with Disabilities, 84.024
 Services for Children with Deaf-Blindness, 84.025
 Educational Media Research, Production, Distribution, and Training Program, 84.026
 Postsecondary Education Programs for Individuals with Disabilities, 84.078
 Programs for Children with Severe Disabilities, 84.086
 Secondary Education and Transitional Services for Youth with Disabilities Program, 84.158

These six programs are administered by the Office of Special Education Programs. To ensure wide and effective use of program funds, the Secretary proposes to select from among these program priorities in order to fund the areas of greatest need for fiscal years 1992 and 1993. A separate competition will be established for each priority that is selected.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, room 4620-2644, Washington, DC 20202. Telephone: (202) 732-4503; TDD (202) 732-1169.

SUPPLEMENTARY INFORMATION: On October 15, 1991 the Secretary published in the *Federal Register* (56 FR 51766) a notice of proposed priorities, for fiscal years 1992 and 1993, for certain program competitions administered by the Office of Special Education Programs.

These programs support AMERICA 2000, the President's strategy for moving the Nation toward the National Educational Goals, by assisting those with disabilities through improved

services and better trained service providers.

Note: This notice of final priorities does not solicit applications. Notices inviting applications under these competitions are published in a separate notice in this issue of the *Federal Register*.

Throughout this notice "state of the art" means employing the most recent validated methods.

Note: Under the heading "dissemination" in this notice reference is made to 20 U.S.C. 1409(g). 20 U.S.C. 1409(g) contains the following requirements:

The Secretary shall, where appropriate, require recipients of all grants, contracts, and cooperative agreements under parts C through G of the Individuals with Disabilities Education Act to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Programs (TAPP) assisted under parts C and D, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 25 parties submitted comments. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows. Please note that this section addresses only those proposed priorities on which comments were received. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Early Education Program for Children with Disabilities

Comment: One commenter suggested that another priority should be developed to support statewide systems change projects. The commenter also recommended that the priorities address "improved outreach to low-income, minority, rural and other underserved populations, and statewide systems for identification, tracking and referral for

categories of children who are at risk of having developmental delays."

Discussion: Regarding improved outreach to low-income, minority, rural and other underserved populations, three of the proposed priorities address underserved populations. The Secretary anticipates announcing a priority in FY 1993 for statewide systems for identification, training, and referral of children at risk of having developmental delays.

Changes: None.

Comment: One commenter expressed concern that while all proposed priorities under the Early Education Program for Children with Disabilities (EEPDC) emphasize programming in the least restrictive environment, they should more specifically address the integration of young children with disabilities into typical community settings such as preschools and day care. Another commenter suggested that language be added to each of the priorities to require that projects include an emphasis on natural environments. This commenter also recommended deleting the term "appropriate" from the priority language or including the language from the House Report on Public Law 102-119 to clarify the meaning of this term.

Discussion: The Secretary believes that the language in the relevant EEPDC priorities sufficiently emphasizes the provision of services in typical environments. Priority 1 (Early Childhood Model Demonstration Projects) discusses the provision of services in the types of settings in which young children without disabilities would participate. Priority 2 (Outreach Projects) references integrated educational settings while establishing the base requirement that the models disseminated must meet the least restrictive environment and natural environment provisions of parts B and H, respectively. For the other three priorities, the issue is not germane since projects are not supported for the purpose of providing services or developing service models. The Secretary also believes that the term "appropriate" should be retained in the language of priorities 1 and 2 as it is consistent with part B and part H of the Individuals with Disabilities Education Act (IDEA).

Changes: None.

Priority 1—Early Childhood Model Demonstration Projects

Comment: One commenter recommended the use of invitational priorities rather than competitive preference because reviewers may not

be consistent in awarding "bonus points" to applications that address the areas in which competitive preference will be given.

Discussion: The Secretary believes that the use of a competitive preference is necessary to increase the number of models available for (1) groups of infants, toddlers, or young children with disabilities and their families from cultural, linguistic, or racial minority groups, including Native Americans; and (2) children with disabilities (ages three through five) who were prenatally exposed to drugs or alcohol and are enrolled in preschool programs. The Secretary has no reason to believe that reviewers will inconsistently award additional points to applicants addressing these groups.

Changes: None.

Comment: One commenter suggested that language be added to the priority to clarify that the \$3,000 to be budgeted in year three of the projects (for reimbursing on-site reviewers for expenses) is in addition to funds required for program management.

Discussion: The Secretary does not believe any clarifying language is needed. The language in the priority makes clear that applicants should develop their year three budgets by incorporating approximately \$3,000 for review costs. Since this project budgeting requirement is established in the priority, the Secretary will expect that the year three budgets of the projects will reflect that additional cost.

Changes: None.

Comment: One commenter suggested that language be added to the competitive preference section of priority 1 (Early Childhood Model Demonstration Projects) emphasizing that projects addressing the competitive preference will, to the extent appropriate, provide services to children in the types of settings in which young children without disabilities would participate.

Discussion: The Secretary agrees with this comment. Although there is already language to this effect in the priority, it is appropriate to repeat the language in the competitive preference section.

Changes: Language has been added to the competitive preference section of the priority emphasizing that projects addressing the competitive preference will, to the extent appropriate, provide services to children in the types of settings in which young children without disabilities would participate.

Priority 3—Experimental Projects

Comment: One commenter recommended particular funding levels for these projects.

Discussion: In announcing proposed priorities, the Secretary does not establish funding levels for the projects. Information about funding levels will be provided when the Secretary invites applications for specific competitions.

Changes: None.

Comment: One commenter recommended that language be added to the priority to clarify that emerging or innovative interventions may be included in research comparing the effects and costs of alternative models.

Discussion: The Secretary does not believe that any clarifying language is needed. The language in the priority requires research on alternative interventions. That language does not exclude emerging or innovative interventions.

Changes: None.

Priority 4—Training of Early Intervention Service Providers Through Training of Faculty From Institutions of Higher Education

Comment: One commenter recommended that the training provided by faculty members lead to credentialing that qualifies individuals for entry level positions. The commenter also recommended that the projects be required to coordinate their activities with the lead agency for the part H program in each State.

Discussion: The Secretary agrees with these comments. In addition to upgrading skills and knowledge, the training provided by faculty members should lead to licensure, degree, or credentialing for the trainees.

Coordination with the lead agency for part H in each of the States is a highly desirable activity for the projects as they plan and implement their training.

Changes: Language has been added to the priority requiring projects to arrange for the granting of credit (toward degree, licensure or credentialing) to trainees receiving training from faculty members. The Secretary has also added language requiring projects to coordinate their activities with the lead agency for part H in each State.

Comment: One commenter expressed concern that faculty members at institutions of higher education would be inappropriately limited to the instructional strategies and content that are available from the single project funded within their region. This commenter recommended that four awards be made but that each project be matched with groups of States that are cohesive conceptually and philosophically. To effect this approach, one of the four projects, or an independent entity, could perform a brokerage function so that States could

have access to any one of the four projects.

Discussion: Although there is some merit to the commenter's suggestions, the Secretary believes that the advantages of the regional approach to training outweigh the potential advantages of the commenter's approach. For example, the regional approach to training is most likely to accomplish the important goal of offering training nationwide. Further, through defining the geographic responsibilities of each project in the priority, an applicant can complete several planning steps (securing faculty member information, determining faculty needs and preferences) prior to submitting an application. Finally, the language of the priority requires the projects to be sufficiently flexible to accommodate a variety of perspectives and preferences. Unlike the commenter, the Secretary would not expect there to be conceptual or philosophical cohesiveness among groups of States. More importantly, however, the Secretary would not expect that cohesiveness across groups of institutions of higher education, units within those institutions, or individual faculty members. If, for example, individual faculty members were given an opportunity to select one of four projects from which to receive training, meeting the logistical requirements alone for these projects would undoubtedly be insurmountable.

Changes: None.

Comment: One commenter expressed concern that administrators of early intervention programs are not included with faculty members of institutions of higher education to receive training.

Discussion: The Secretary (and the proposed priority) acknowledges that many professionals, including administrators of early intervention programs, provide training to service providers. However, expanding the scope of these projects to include other professionals will unduly strain the resources available to the four projects.

Changes: None.

Comment: Two commenters recommended expanding the scope of the proposed priority to include training of service providers both before and after they have entered the field. One commenter also recommended that other trainees be included (in addition to faculty members) since training for personnel currently in the field is more commonly provided by professionals not associated with institutions of higher education.

Discussion: As proposed, the purpose of the priority is to upgrade the skills

and knowledge of service providers through training faculty members in institutions of higher education. The Secretary believes that by limiting the goals of the training to current service providers there would be more immediate impact of the training, and that improvements in training prospective providers would be an accompanying outcome (although unstated goal) of that training. The Secretary also believes that improved training of both current and prospective service providers is important to achieve. However, the Secretary believes that expanding the scope of activities to include training of prospective providers would be inappropriate given that funding is available for this type of training under the Training Personnel for the Education of Individuals with Disabilities Program. The Secretary disagrees with the recommendation to expand the training beyond faculty at institutions of higher education. While many professionals are involved in providing training to current providers, expanding the scope of the proposed projects would unduly strain the resources that will be available to each of the four projects. Further, the Secretary believes that most professionals who are engaged in training current providers are, in fact, affiliated with institutions of higher education. Most of the training grant awards for current providers, made over the past several years under this authority, have gone to institutions of higher education.

Changes: None.

Priority 5—Early Childhood Research Institute—Service Implementation and Capacity for Providing Early Intervention Services

Comment: One commenter requested clarification of the priority language, "The major unit of analysis for the research must be the child and the child's family (and the services provided)." Specifically, the commenter asked whether this meant that the key data to be collected are the nature, kind, and amount of services to be provided or that the key data are children's developmental progress following intervention.

Discussion: The Secretary believes that no further clarification of the priority language is necessary. The priority language states that samples of children and families are to be selected for the purpose of determining how their characteristics and the services they receive (or do not receive) are affected by the State's eligibility policies, identification instruments and procedures, funding sources, interagency

agreements at the State and local levels, and other factors described in the priority. The Secretary does not believe that any language in the priority suggests that children's developmental progress is a focus for the research.

Changes: None.

Comment: One commenter suggested that the priority language be clarified regarding the relative importance of studying within-State variations versus variations across States. The commenter also requested clarification regarding the number of States that should be studied by the institute.

Discussion: Unless there are research findings suggesting otherwise, the Secretary believes that the institute's initial research activities should give equal emphasis to within-State variations and to variations across States, and should be guided by the institute's conceptual framework. If preliminary institute findings strongly suggest that the goals of the institute will be better met by changing this emphasis in year two or year three of the funding period, the Secretary would expect the institute to propose a different and more productive course. For example, if the findings from the first set of States suggest a consistent application of eligibility criteria across and by local service providers (regardless of the degree of detail of the States' eligibility policies, for example) then the institute may propose to deemphasize this study area by proposing a limited follow-up study to determine if the same finding obtains in a second set of States. Further, the Secretary believes that the institute's initial findings will also affect the number and characteristics of the children and families and the State and local service programs that are proposed for study in subsequent years of the institute's funding period. For example, initial research findings could argue for (1) selecting a different set of States (or a different number of States), or (2) selecting children, families and service providers on a different basis, in year two or year three of the funding period.

Changes: None.

Services for Children with Deaf-Blindness Program

Comment: One commenter recommended substituting the word "inclusive" in the place of "integrated" where it appears in the priorities for this program.

Discussion: "Integrated" is the term used in the authorizing legislation and program regulations, and thus is used in the proposed priorities. Use of the term, however, is not intended to suggest limits on the degree to which students

with disabilities are included in particular school and community environments.

Changes: None.

Educational Media Research, Production, Distribution, and Training

Comment: One commenter requested that local governmental access and public affairs programming be added as a priority.

Discussion: The Secretary recognizes that local governmental access and public affairs programming such as local news is important. However, analyses of previous grants under the priority for closed-captioned local news, as well as concerns expressed by consumers, suggest the need for improved strategies to ensure quality and accuracy in captioning. Through another funding mechanism, the Secretary is supporting a project to explore the range of strategies for implementing and supporting captioned local news while ensuring the quality and accuracy of captioned local news. The Secretary does not intend to support new projects for local news until the results of this activity can be analyzed and used in formulating those projects.

Changes: None.

Comment: One commenter cited congressional interest that the Department develop and implement a plan to support, over a several year period, the placement of a decoder in the home of every child with a hearing impairment.

Discussion: The Secretary is aware of congressional interest in promoting greater access to closed-captioned decoders. The Secretary is considering the most effective mechanism for increasing awareness of and access to closed-captioned technologies.

Changes: None.

Priority 1—Descriptive Video

Comment: One commenter believes that described videos should be required to be distributed with the support of the program supplier through home video suppliers and libraries. The commenter also believes that support for descriptive video should not in any way diminish continued Department of Education support for captioning.

Discussion: The Secretary recognizes that traditional distribution systems of home video suppliers and public libraries may be useful in serving this population, but does not believe that the method of distribution should be specified in the priority. The Secretary agrees that support for descriptive video should not diminish support for closed-captioned television.

Changes: None.

Comment: Two commenters indicated a concern that the current technology for national broadcast of descriptive video is not commercially viable at this time.

Discussion: The Secretary agrees that the current technology for national broadcast of descriptive video is not commercially viable at this time. The priority as proposed acknowledges this lack of commercial viability, and, thus, covers only public and cable networks and movies.

Changes: None.

Comment: Two commenters recommended that proposals be funded that are structured to include support for different kinds of programming such as science and nature, nonfiction or cultural, dramatic, and children's programs. One commenter also indicated the importance of outreach efforts.

Discussion: The Secretary recognizes the importance of the availability of a variety of video described programming. The priority as written does not preclude the programming types mentioned by the commenters. The Secretary does not believe, however, that specific types of programming should be included. The Secretary also recognizes the importance of outreach efforts. The priority as proposed requires comprehensive outreach.

Changes: None.

Priority 2—Closed-Captioned Daytime Programming

Comment: One commenter strongly endorsed the continued Federal funding of captioning of daytime programming and recommended the funding of additional daytime drama on each of the three networks.

Discussion: The Secretary recognizes the importance of captioning for daytime programming. The priority, as proposed, allows for the captioning of additional daytime programming on each of the three networks if resources permit. However, the Secretary encourages captioning a range of types of daytime programming under this priority.

Changes: None.

Comment: One commenter indicated a concern that based on past practice, none of the networks will be able to extend any funds for daytime programming. The commenter also indicated that the definition for daytime programming be kept as broad as possible to include dramas, "infotainment" programs, game shows, and newly created news programs.

Discussion: The Secretary recognizes the lack of supplemental private sector support for daytime programming at this time. The priority as proposed may

support various types of daytime national programming, and is not limited to daytime drama.

Changes: The Secretary has modified the project design to emphasize diverse types of programming.

Comment: One commenter indicated a concern that the national networks lack sufficient private sector sponsorship for closed-captioning in daytime programming. The commenter indicated that daytime drama is currently being captioned with Federal support, and indicated the importance of maintaining long term funding plans for captioned programs.

Discussion: The Secretary recognizes the lack of supplemental private sector support for daytime programming and agrees that programs that are closed-captioned should continue to be captioned.

Changes: The priority has been modified to clarify the intent of continued Government support for programs currently captioned.

Priority 3—Special Research, Development, and Evaluation Projects

Comment: One commenter supported the decision to fund projects in the three identified categories. The commenter also suggested a fourth area of investigation to investigate enhanced captioning system technology with respect to High Definition Television.

Discussion: The Secretary recognizes the importance of the new technology, especially the significance of High Definition Television on captioning technology. Through a separate mechanism he is investigating the impact of this and other new technologies on persons with sensory impairments. In particular, implications for captioning technology will be explored.

Changes: None.

Comment: One commenter expressed concern that this priority did not include a category for investigating the use of captioned television as an educational tool for all children, not only those who are deaf and hard of hearing.

Discussion: The Secretary agrees with the importance of research and development on the potential uses of closed captioning as an educational tool. However, only projects that explore uses of media and technology for individuals with disabilities can be funded under this program. These individuals are included under the priority.

Changes: None.

Comment: Five commenters expressed support for a fourth category, under priority 3, for: "projects that adapt and test the effectiveness of a range of

media and technologies, including captioned educational television, adapted computer software, and adapted video discs (and original video discs) for improving the range of educational experiences, options, and environments for individuals who are deaf or hard of hearing."

Discussion: The Secretary agrees with the importance of research and development in the area of multi-media technology as it applies to educational needs of persons who are deaf and hard of hearing.

Changes: The priority has been expanded to include a fourth category that is responsive to the comments and also includes individuals with all disabilities (including those who are deaf and hard of hearing.)

Postsecondary Education Programs for Individuals with Disabilities

Priority 1—Career Placement Opportunities for Students with Disabilities in Postsecondary Programs

Comment: One commenter indicated that the project description is not clear as to whether the population to be served is students currently enrolled in the specified schools who need job placement, or if the schools will be collaborating with service providers to employ persons with disabilities on postsecondary campuses.

Discussion: The Secretary intends that students with disabilities currently enrolled on postsecondary campuses who need job placements be served, and allows applicants to propose from among a variety of approaches.

Changes: None.

Comment: One commenter suggested that the term "placement percentages" could be interpreted as quotas, which may be a controversial and distracting term, and is therefore unnecessary to be included in the priority.

Discussion: The Secretary intends that applicants' efforts and abilities to place students with disabilities be increased through proposed project activities. Projects engaged in those placements may report current successes in a variety of ways including percentage of students with disabilities placed, and track changes in placements for students with disabilities, resulting from project activities.

Changes: The term "placement percentages" has been changed to "job placement".

Comment: One commenter requested a clarification of the term "work experiences" with respect to the compensation status for the worker with

a disability (are they to be paid or are they voluntary?).

Discussion: The Secretary allows applicants to propose, from among a variety of methods for providing work experiences, paid, voluntary, or a combination of approaches.

Changes: None.

Children with Severe Disabilities Program

Comment: One commenter indicated there was a lack of specific reference to children with medically fragile conditions in the program priorities for the Children with Severe Disabilities Program.

Discussion: Projects focusing on children with medically fragile conditions are not precluded under these program priorities as written. Delineating specific severely disabling conditions in these priorities would be unnecessarily prescriptive.

Changes: None.

Priority 1—Outreach: Serving Students with Severe Disabilities in Integrated Environments

Comment: One commenter expressed concern that there does not appear to be a clear transition from the outreach priority to the innovations priority that would assist schools in initiating the development of inclusive programs.

Discussion: The intent of priorities 1 and 2 is different. The intent of priority 1 is to increase the capacity of local school districts or State educational agencies in integrated settings and encourage the development of demonstration sites. The Secretary expects that the outreach priority will facilitate the adoption and implementation of validated educational models or components of models by encouraging applicants to utilize a variety of outreach activities including developing inclusive education demonstration sites. The intent of priority 2, on the other hand, is to study strategies for educating students with disabilities full time in regular classes. As the strategies developed in these projects are validated, they may, in future years, be spread through priorities similar to priority 1.

Changes: None.

Comment: Two commenters expressed concern that the Outreach priority is too broad in scope because it encompasses both school and community integration and recommended that the priority be limited to address only school integration so as to encourage similar study designs across projects.

Discussion: The intent of the Outreach priority is to facilitate the adaptation

and implementation of proven models in other sites. Because these projects are not studies, there is no reason to restrict their scope.

Changes: None.

Comment: One commenter suggested that while priorities 1 and 2 should clearly target the inclusion of students with severe disabilities, it should be acknowledged within the priority description that this type of staff training will, at least, indirectly affect students with milder disabilities as well.

Discussion: The Secretary agrees that the training provided under these projects could benefit other groups of students, including students with mild disabilities. However, this potential secondary benefit should not affect the designs or activities of the projects.

Changes: None.

Comment: One commenter recommended that because of increased interest in inclusive programming at least six proposals be funded for priority 1 and 2.

Discussion: In announcing proposed priorities, the Secretary does not establish funding levels for the projects. Information about funding levels will be provided when the Secretary invites applications for specific competitions.

Changes: None.

Comment: One commenter suggested that this priority require applicants to focus on children with more severe disabilities but to operate within a model that serves all children with special needs so as to allow a more rational planning process.

Discussion: The Secretary agrees that in many settings a more holistic planning process would facilitate more uniform inclusion of students with special needs. Certainly the projects funded under this priority could apply such a framework. At the same time, schools may differ in how they approach the planning process. To require a particular framework seems unduly restrictive.

Changes: None.

Comment: One commenter suggested that the term "integration" be replaced with the word "inclusion" in priorities 1 and 3. Another commenter expressed concern that priority 1 will support projects that maintain "traditional integration" rather than more inclusive education. The commenter recommended the wording for Priority 1 be examined with this concern in mind.

Discussion: Review of these priorities does not support this concern. Priority 1 requires that the models or components of models be based on current research and theory, and these would certainly include the concepts of inclusive education. The types of practices listed

as examples similarly do not support this concern. "Integrated" is the term used in the authorizing legislation and program regulations. Its use in these priorities is not intended to suggest limits on the degree to which students with disabilities are included in particular environments.

Changes: None.

Priority 2—Developing Innovations for Educating Children with Severe Disabilities Full-Time in General Education Classrooms

Comment: Two commenters recommended that priority 2 be expanded to support research projects at the middle and high school levels in addition to the elementary school level.

Discussion: The Secretary agrees these are important levels and will consider this area for a program priority in the future. The current priority 2, however, is designed to support research projects. By restricting the priority to strategies appropriate for elementary schools, it is more likely that similar strategies will be tested across projects and provide a better base for drawing conclusions about those strategies.

Changes: None.

Priority 3—Social Relationships Research Institute for Children and Youth with Severe Disabilities

Comment: One commenter asked for clarification in the wording of the purpose statement in priority 3 as it appears to be missing some text.

Discussion: The Secretary agrees that some text was inadvertently omitted from the purpose statement of proposed priority 3.

Changes: The priority has been modified to include the text that was inadvertently omitted.

Secondary Education and Transitional Services for Youth with Disabilities Program

Comment: One commenter stressed the importance of on-going case management and transitional services.

Discussion: While the provision of case management and transitional services in general is not specifically addressed in these priorities, a purpose of the State Systems for Transition Services for Youth with Disabilities Program, which has been announced as a separate competition, is to increase the availability, access, and quality of transition services. Funds under that program are to be used to improve the capacity for case management.

Changes: None.

Comment: Two commenters indicated that projected funding levels for priorities under some programs are too low to support successful projects.

Discussion: Project funding levels are not part of the proposed priority and are not subject to comment here.

Changes: None.

Comment: One commenter recommended reversing the order of priorities one and two because of a belief that the second proposed priority represents a more important approach in terms of long-term outcomes.

Discussion: The order in which the proposed priorities were listed is not a reflection of the relative importance attached to the particular priority areas. The specific priorities selected in any year and the funding level for particular priorities is dependent upon a number of factors, and will be announced when the Secretary invites applications for specific competitions.

Changes: None.

Priority 2—Model Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination

Comment: One commenter supported the purpose and intent of priority 2: Model Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination and suggested that these skills be taught in fully inclusive environments.

Discussion: The priority presently requires that the proposed project support a range of opportunities both in-school and out-of-school that could provide experiences leading to the development of skills necessary for self-determination. The Secretary agrees that these skills are best taught in integrated, community settings.

Changes: The project design has been changed to require that the model incorporate the range of opportunities or potential opportunities in-school and out-of-school in integrated, community settings that could provide these experiences that develop self determination.

Priority 3—Research Projects on the Transition of Special Populations to Integrated Postsecondary Environments

Comment: One commenter suggested that projects focusing on students with severe intellectual disabilities be considered under priority 3: Research Projects on the Transition of Special Populations to Integrated Postsecondary Environments.

Discussion: Although an overall goal of the Secondary Education and Transitional Services for Youth with Disabilities Program is to support efforts that develop more effective strategies

for all students who present a greater challenge to the system, the program in the past has supported entire competitions and individual projects within competitions focusing on youth with severe intellectual disabilities. While these efforts have developed a variety of strategies for this population, there are only a few isolated strategies for the three populations identified in the priority. There are even fewer examples that consolidate these strategies into successful service delivery models for these population. However, the Secretary will consider future priorities that focus on the development of additional effective strategies for youth with severe intellectual disabilities.

Changes: None.

Comment: One commenter suggested that under priority 3: Research Projects on the Transition of Special Populations to Integrated Postsecondary Environments the populations to be served should include other low incidence and underserved populations. The commenter also recommended that collaboration be extended to professionals associated with the corrections or judicial fields, as well as mental health professionals.

Discussion: Due to the limited number of available strategies for the identified populations, the Secretary intends to limit this priority to research for these specific groups. Applicants are encouraged to form consortia or multi-site approaches to recruit a sufficient number of project participants. However, the Secretary maintains that the strategies identified, developed, or tested by the project design have specific implications for at least one of the special populations named in this priority. Since the priority presently encourages collaboration with "other providers of adult services," projects are encouraged to collaborate with all professionals relevant to the successful transition of project participants.

Changes: None.

Title of Program: Early Education Program for Children with Disabilities. CFDA No. 84.024.

Purpose: To provide Federal support for a variety of activities designed to address the special problems of infants, toddlers, and preschool aged children with disabilities, and to assist State and local entities in expanding and improving programs and services for those children and their families. Activities include demonstration, outreach, experimental, research, and training projects, and research institutes.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) in

34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Early Childhood Model Demonstration Projects

This priority supports projects that develop, implement, evaluate, and disseminate new or improved approaches for serving young children with disabilities (infants, toddlers, and children ages birth through eight) and their families. Under this priority, to the extent appropriate, projects will provide services to children in the types of settings in which young children without disabilities would participate. This may include models developed for use in homes or in hospitals (such as neonatal intensive care units).

Project Design: Projects supported under this priority will be major contributors of models and components of models for service providers in the field and the Outreach projects funded under the Early Education Program for Children with Disabilities. Therefore, projects must produce models that have been rigorously evaluated (1) at the original model development site with positive results, and (2) at other site locations to determine whether the model can be adopted by other sites and yield similar positive results. As described under Period of Award (below), projects supported under this priority will be reviewed during the third year of their project period to examine, among other factors, the degree to which the evaluation findings at the original site are promising, and the quality of the evaluation design proposed to test the model at other sites during years four and five. Should the project be continued after year three, the project must have secured other funding to support the operation of the model at the original site so that all or most of the grant funds during years four and five may be used to support the adoption and evaluation of the model at other sites.

Projects must (1) address a specific service problem or issue; (2) address specific components or procedures of the model and the rationale, based on theory, research, or evaluation, for those components or procedures; and (3) delineate specific types of young children (i.e., by age, disability or diagnosis, level of functioning) and their families.

The Secretary will give competitive preference (by awarding up to 10

additional points) to projects that provide evidence that they will develop, implement, evaluate, and disseminate appropriate models for providing services for (1) groups of infants, toddlers, or young children with disabilities and their families from cultural, linguistic, or racial minority groups, including Native Americans; or (2) young children with disabilities (ages three through five) who were prenatally exposed to drugs or alcohol and are enrolled in preschool programs. Projects addressing the competitive preference must, to the extent appropriate, provide services to children in the types of settings in which young children without disabilities would participate.

Evaluation: Projects must use an evaluation design that measures multiple, functional outcomes for the young children with disabilities and their families who participate in the proposed interventions.

Period of Award: The Secretary will approve projects with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue a project for the last two years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary also will consider the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the project, are to be performed during the project's third year, and may be included in that year's annual evaluation that the grantee is required to perform under 34 CFR 75.590. Costs associated with the services to be performed by the three review team members (estimated to be approximately \$3,000 total) should be incorporated into the project's budget for year three. In developing its recommendation the review team will consider, among other factors, the following:

- (a) The degree to which the project's model is, or will be by the end of year three, designed soundly, replicable by other agencies, and providing state-of-the-art interventions for the target population;
- (b) The extent to which dissemination of the model will meet a significant or unique service need in other geographic locations;
- (c) The degree to which the project's evaluation initially produced compelling, quantifiable evidence of the effectiveness of the model as implemented at the original development site;
- (d) Documentation that funding from sources other than the Early Education

Program for Children with Disabilities is available to support the operation of the model at the original developmental site during years four and five;

(e) The extent to which the project has documented other agencies' commitment to adopt the model and participate in its evaluation during years four and five of the project period; and

(f) The extent to which the project has sound plans for aiding in replication and for evaluating the model in replication sites during years four and five of the project period.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 2: Outreach Projects

This priority supports projects that build the capacity of educational and other agencies to implement proven infant, toddler, or early childhood models (including inservice training of personnel models), selected components of those models, or other exemplary practices. At this time, States are striving to implement the early intervention formula grant part H program for infants and toddlers and provide improved services to preschool children with disabilities. As they enter new or expanded service areas, State agencies and local service agencies need to be made aware of the range of available, successful practices, curricula, and products. Once States and local service agencies select one or more proven models for adoption, there is a need for staff training and technical assistance to install those models as services are developed and expanded. The purpose of the outreach program is to support projects that will assist States, local education agencies, and local service agency personnel to adopt proven models, components of models, or other exemplary practices that will improve early intervention or special education and related services to children with disabilities (birth through eight years of age).

Project Design: Projects must:

- (a) Coordinate their dissemination and replication activities with the lead agency for part H of the IDEA for early intervention services or the State educational agency for special education and related services for preschool services; and
- (b) Disseminate and assist in replicating proven models or proven components of models that provide or improve services needed to assist young children, aged eight and below, to achieve their optimal functioning. Models or components of models, at a minimum, must include:

(1) Approaches relevant to programming in least restrictive environments, including provision of skills necessary to function, if appropriate, in integrated educational settings;

(2) Effective involvement of families in the planning and delivery of services; and

(3) Interagency coordination when multiple agencies are involved in the provision of services to young children.

The models or components of models must be state-of-the-art, providing procedures and information that are not readily available to program sites within the geographic area where outreach is planned. The models or components of models must have recent unambiguous evaluation information demonstrating their effectiveness. In addition, the models or components of models must be consistent with part B or part H of the IDEA. Outreach activities must include, but need not be limited to: public awareness, product development and dissemination, site development, training, and technical assistance. Projects may work with major early childhood associations, provider groups, or agencies in disseminating and replicating the proven models or components of models. The models or components of models selected for outreach need not have been developed through the Early Education Program for Children with Disabilities. Projects may disseminate and help replicate multiple models or components of models that were not developed by the applicant.

For projects planning to conduct outreach activities in more than a single State, the plan of operation must only include plans concerning specific sites and activities for the initial year. During the first year of outreach funding, States will be provided information by the contractor for the early childhood technical assistance development system funded under section 623(b) of the IDEA, regarding outreach projects that are funded under this priority, and the models and services that are being offered by those projects. As a result, States will have more choices regarding the kinds of models that are available so that particular outreach efforts can be better matched with a particular State's needs. The technical assistance development system funded under section 623(b) of the IDEA, after determining States' needs for outreach services, will then assist the States and outreach projects in matching States' needs with outreach project resources. Outreach projects will contact States and use the resultant information as a basis for proposing specific plans for

years two and three of the project period. These plans will be finalized during negotiation of grant awards for years two and three of the project period.

The Secretary particularly invites applications for projects that will address underserved groups, such as young children born with HIV infection, those prenatally exposed to drugs or alcohol, and those who are members of cultural, linguistic, or racial minority groups, including Native Americans. However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over other applications for other outreach projects that serve young children with disabilities aged birth through eight.

Evaluation: Each project must evaluate the dissemination, replication, and training activities to determine their effectiveness, including their impact on the provision of services to young children with disabilities. Evaluation activities must include types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of children and families served at the sites where models are adopted or adapted, child and family progress information, and changes in the model made by the adapting sites.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 3: Experimental Projects

This priority supports investigations that compare the effects and costs of alternative interventions or approaches for serving infants, toddlers, or preschool-aged children with disabilities and their families. Interventions selected for comparison must include those for which information is unavailable regarding their relative effects and costs for particular groups of children or within particular settings or conditions.

This priority addresses the need to provide information to service providers and others regarding the relative effects and costs of different interventions. Historically, program developers have collected information about the efficacy of a particular intervention but typically have not conducted research to determine its effects and costs as compared to other interventions having the same or similar objectives. Potential adopters, when considering an array of different interventions, often have insufficient information on which to make informed choices. However, previous comparative investigations

have not necessarily provided data that demonstrate the clear superiority of one intervention over another. Frequently, there is an interaction between the characteristics of the participants or the settings and the effects of the interventions. Therefore, projects supported under this priority must design the research in a manner that will identify which interventions are likely to be most effective with which children and families, given specific characteristics and kinds of settings. The outcome of this priority is expected to be a set of projects that contribute information to the knowledge base regarding the relative effects and costs of different interventions. That information should lead to the improvement of services provided to infants, toddlers, or preschool-aged children with disabilities and their families.

Project Design: Projects funded under this priority must (1) address a specific problem or issue of importance to the field; (2) identify specific approaches or interventions that will be compared; (3) carry out the research within a conceptual framework, based on previous research and theory, that provides a basis for the interventions to be compared and the research design; (4) collect a variety of descriptive and outcome data, including specific descriptive information regarding the children and families targeted by the project (e.g., age, disability, level of functioning) and multiple, functional outcome measurements for the young children with disabilities and their families who participate in the proposed interventions.

Further, projects supported under this priority must:

(a) Compare the alternative interventions or approaches in typical service settings;

(b) Conduct the investigations using methodological procedures that will produce unambiguous findings regarding the relative effects and costs of the alternative interventions as well as any findings on interaction effects between particular approaches and particular groups of children or particular contexts; and

(c) Design the research and dissemination activities in a manner that will lead to improved services for infants, toddlers, or preschool-aged children with disabilities and their families.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 4: Training of Early Intervention Service Providers through Training of Faculty from Institutions of Higher Education (CFDA 84.024)

This priority supports projects that provide training to personnel currently providing early intervention services through the development, implementation, evaluation, and dissemination of training models for college or university faculty members. It addresses the need for state-of-the-art faculty level expertise and early intervention service provider expertise that has developed subsequent to the establishment of the part H Program for Infants and Toddlers under the IDEA and the expanded knowledge base relative to early intervention services. Although a variety of professionals from a variety of settings may provide training for early intervention service providers, this priority addresses the need for, and is restricted to, training college and university faculty members who are providing training for personnel currently providing early intervention services.

Project Design: A model project supported under this priority must address training for current college and university faculty members who are or plan to be engaged in the training of personnel who provide direct early intervention services to infants and toddlers with disabilities. A model project must be based on a conceptual framework that identifies the existing roles and responsibilities both of the faculty members and of early intervention service providers they will train, the changes required in those roles and responsibilities, and the skills needed to implement the new roles. The model project must develop, implement, evaluate, and disseminate training curricula for use by faculty members, including procedures and materials appropriate for some or all of the ten professional disciplines listed under section 303.12(e) of the regulations governing part H of the IDEA (audiologists, nurses, nutritionists, occupational therapists, physical therapists, physicians, psychologists, social workers, special educators, speech and language pathologists). Training curricula, procedures, and materials must include discipline-specific content, as well as multidisciplinary content related to developing and implementing Individualized Family Service Plans, service, coordination services, coordinating family focused early intervention, and providing respite and family support services and other

services described in part H of the IDEA. Training curricula must address competencies related to cultural, linguistic, and minority groups, as appropriate. Training curricula must also be specific as to the types of activities faculty members shall use to train early intervention service providers. Model projects funded under this priority must (1) conduct a needs assessment to determine the training needs of early intervention service providers as well as the needs of faculty members expected to provide that training, (2) coordinate the training activities with the State part H lead agencies within the region, (3) determine feasible methods to address those training needs, (4) validate training content and training methods, (5) implement the training model for faculty members using one or more of a variety of delivery mechanisms (e.g., summer institutes, on-site workshops, self-study print materials or other media, telecommunications, etc.), and (6) implement the training of early intervention service providers by faculty members trained under (5) and arrange for the trainees to receive credits leading to licensure, degree, or credentialing. To satisfy unanticipated training needs identified through the needs assessment, projects must maintain a flexible staffing plan that allows for hiring experts to develop or provide particular kinds of training as appropriate.

In order to provide state-of-the-art training, projects must (1) communicate and collaborate with other training projects funded by the Office of Special Education Programs (OSEP) and other agencies, (2) utilize, as appropriate, training methods and materials developed by those projects (including methods and materials developed by the Early Childhood Research Institute—Personnel), and (3) collaborate, as appropriate, with State, regional or national professional licensing and accreditation agencies to offer continuing education units for training participants.

The Secretary intends to make four awards under this priority. One award will be made in each of the four following geographic areas to conduct training of faculty from some or all institutions of higher education within that geographic area. Faculty members and institutions selected in each area must in turn provide training for early intervention direct service providers in one or more of the States within the area. The areas are:

(1) West (Hawaii, Washington, Oregon, Alaska, California, Idaho,

Nevada, Montana, Wyoming, Utah, Arizona, New Mexico, Colorado, Guam, Northern Marianas, Palau, American Samoa);

(2) Midwest (North Dakota, South Dakota, Wisconsin, Illinois, Nebraska, Oklahoma, Texas, Kansas, Michigan, Indiana, Minnesota, Iowa, Missouri);

(3) Northeast (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Maryland, New Jersey, Ohio, Delaware); and

(4) Southeast (District of Columbia, Virginia, West Virginia, Kentucky, Tennessee, Arkansas, Louisiana, North Carolina, South Carolina, Mississippi, Georgia, Alabama, Florida, Puerto Rico, Virgin Islands).

Evaluation: Projects must evaluate the effectiveness of the training through assessment of participant skills (of both the faculty members trained to provide training as well as the early intervention direct service personnel trained by those faculty members) during and immediately following the training and through administration of follow-up and support measures that ensure that the participants master and effectively implement the new content and skills.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 5: Early Childhood Research Institute—Service Implementation and Capacity for Providing Early Intervention Services

This priority establishes an Early Childhood Research Institute to identify service patterns and gaps for children with disabilities, including those at risk, ages birth through five years, in several States. At least two of the States selected for study must serve all three groups of eligible infants and toddlers under part H (i.e., (1) children experiencing developmental delays; (2) children having a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and (3) children who are at risk of having developmental delays) and all children with disabilities aged three through five.

Project Design: The institute must conduct research within a conceptual framework that includes the characteristics of eligible children (and their probable service needs), the State and local factors that potentially affect the availability and provision of services, and the potentially explanatory variables (based on theory or research). Specific research questions must follow from the conceptual framework, as well as focus on the interrelatedness of policy development,

policy implementation (at the State and local level), and program implementation (at the family and child level). The major unit of analysis for the research must be the child and the child's family (and the services provided), with descriptive and explanatory information collected at local and State levels to explain variations observed in the availability and provision of services to individual children and families in different communities and families.

The research must provide information that can be used by policy-makers and administrators at Federal, State, and local levels to: (1) identify factors that facilitate or interfere with service implementation, (2) identify useful solutions to service delivery problems faced by State and local service providers, and (3) examine the impact of variations in eligibility criteria, funding sources, interagency collaborative arrangements, and service delivery on children with disabilities and their families. The institute must conduct both descriptive and explanatory studies, test hypotheses and propositions derived from previous research or initial institute findings, and use a combination of research methodologies, including survey research, case studies, multiple case studies following replication logic, document analysis, and direct observation.

Eligibility criteria, identification instruments and procedures, funding sources for service programs, interagency collaboration, and service delivery patterns must be studied in depth in multiple sites in several States. Sites in several other States may also be included for identifying State-to-State variations and for replicating certain study findings. The institute must study at least two States that include children at risk for developmental delay under the part H program who may be found ineligible at three years of age for services under IDEA part B and chapter 1 State-Operated or Supported Programs for Children with Disabilities.

The research program must consider (1) the consequences of using different eligibility criteria and identification instruments and procedures on the number and characteristics of children who are served and under the part H, part B, and chapter 1 programs; (2) the funding sources that are used to complement part H and part B and chapter 1 funds for eligible children, and the availability of other funds to provide services to children who are ineligible for part B or chapter 1 services at age three who have continuing learning

problems; (3) the effect of different interagency collaborative arrangements at the State and local levels on the availability and quality of services; (4) the patterns of service delivery that are associated with variations in eligibility criteria, funding sources, and interagency collaborative arrangements; and (5) other factors (e.g., the number of available qualified personnel, the number of service placement options for children, State and local demographic characteristics, geographic features such as remoteness) that promote or hinder the delivery of services to all eligible children within the sites being studied.

In carrying out its research activities, the institute personnel must demonstrate expertise in each of the particular research methodologies employed. Collaboration between and among policy researchers and individuals with programmatic experience with infants and young children is essential. The institute must also provide research training and experience for at least 10 graduate students annually.

Dissemination: Project reports, products, and other information must be broadly disseminated to policy-makers and administrators specifically at State and local levels. In addition, reports must be prepared and delivered as described at 20 U.S.C. 1409(g).

The Secretary will approve one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary. The services of the review team are to be performed during the last half of the institute's second year, and may be included in that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team must be paid for with project funds. In developing its recommendation, the review team will consider, among other factors, the following:

- (1) the timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the institute; and
- (2) the degree to which the institute's research designs and methodological

procedures demonstrate the potential for producing significant new knowledge and products.

Program Authority: 20 U.S.C. 1423.

Title of Program: Services for Children with Deaf-Blindness Program. CFDA No. 84.025.

Purpose: To assist States in assuring the provision of early intervention, special education, and related services to infants, toddlers, children, and youth with deaf-blindness; to provide technical assistance to agencies that are preparing adolescents with deaf-blindness for adult placement; and to support research, development, replication, preservice and inservice training, parental involvement activities, and other activities to improve services to children with deaf-blindness.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: State and Multi-State Services Projects for Children with Deaf-Blindness and Optional Pilot Projects for Children with Deaf-Blindness

This priority supports two types of projects: (a) State and Multi-State Projects for Children with Deaf-Blindness, and (b) Optional Pilot Projects for Children with Deaf-Blindness. Public and non-profit private agencies, institutions, or organizations, including the Bureau of Indian Affairs of the Department of the Interior, are eligible to compete for a State or multi-State project. Of these applicants, only those applicants whose application for a State or multi-State project is approved for funding are eligible to have their applications reviewed for possible funding of a pilot project. Applicants seeking support for both State and Multi-State Projects for Children with Deaf-Blindness as well as the Optional Pilot Projects for Children with Deaf-Blindness must submit a two-part application, each complete by itself and containing its individual budget.

(a) **State and Multi-State Projects**—State and multi-State projects must provide services to infants, toddlers, children, and youth with deaf-blindness and technical assistance to public and private agencies, institutions, and organizations providing early intervention, early identification, education, transition, vocational, and

related services to children with deaf-blindness, as described at 34 CFR 307.11. Applications for State and multi-State projects will be evaluated using criteria at 34 CFR 307.33.

(b) **Pilot Projects for Children with Deaf-Blindness**—These projects are designed to supplement activities supported by State and multi-State projects by facilitating the establishment and implementation of validated, effective educational practices in the least restrictive school and community environments in selected sites. Applications for Pilot Projects for Children with Deaf-Blindness will be evaluated using criteria at 34 CFR 307.36. This optional pilot project component would increase the capacity of local school districts or State educational agencies to serve students with deaf-blindness in integrated school and community settings and encourage the eventual assumption of funding responsibilities of State and local authorities.

The outcomes of this optional component are anticipated to include:

(a) The establishment at pilot sites within the State of tested, effective practices in the education of children and youth with deaf-blindness that address the heterogeneous nature of these children and youth;

(b) The widespread implementation of tested, effective practices in sites that provide opportunities for general and special education personnel, external to the project sites, to observe concrete examples of these educational concepts, and to have "hands-on" practice and support in their use; and

(c) An increase in the quality of effective practices for children with deaf-blindness.

Project Design: A project may propose to establish a pilot project as an additional component of the State or multi-State project. Pilot projects must:

(a) Expand local educational agency capabilities by providing services to children with deaf-blindness that supplement services already provided to children and youth through State and local resources; and

(b) Encourage eventual assumption of funding responsibility by State and local authorities.

Specifically, in meeting the requirements of this pilot component, projects must:

(1) Implement, in selected sites, tested, effective practices in the education of children with deaf-blindness;

(2) Address the heterogeneous nature of these children, their need for individualized educational and vocational programming and for the

acquisition of functional, age-appropriate skills essential for community integration;

(3) Promote the widespread adoption and implementation of tested, effective practices (a) in sites that provide opportunities for general and special education personnel, external to the established project sites, to observe examples of these educational concepts, and to have "hands on" experience in utilizing these practices, strategies, and techniques; and (b) that enhance the State-level system of services by increasing the number and quality of effective practices;

(4) Initiate and maintain collaboration with relevant agencies providing services to children with deaf-blindness; and

(5) Initiate activities to encourage the eventual assumption of funding by State and local authorities.

Further, in meeting the requirements under the optional pilot component, activities must:

(1) Be based on current theory and research and provide evidence of the validity of the practices;

(2) Address the unique needs at the project sites;

(3) Focus on specific outcomes for project participants;

(4) Promote involvement of parents and family members in the provision of services to children with deaf-blindness; and

(5) Provide documentation of changes resulting from the implementation of the pilot project activities.

The Secretary particularly invites projects that propose to provide, under this optional pilot component, validated effective practices related to:

(a) Transition from school to adult life in the community;

(b) Early identification and intervention for infants and toddlers with deaf-blindness;

(c) Strategies that facilitate the integration of students with deaf-blindness into neighborhood schools;

(d) Acquisition of communication or orientation and mobility skills;

(e) Nonaversive behavior management; or

(f) Facilitation of family involvement. However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the State and Multi-State Projects priority described in this notice.

Evaluation: Projects selected for the optional pilot project component must implement an evaluation plan that measures:

(1) Child-centered, functional skill outcomes of the participating children and youth with deaf-blindness;

(2) Changes resulting from the implementation of the pilot project activities, including the overall outreach impact of the project on both the staff of the schools where the pilot project is located and visiting personnel external to the pilot site or sites; and

(3) The extent of involvement of parents and family members in the provision of services to children with deaf-blindness.

As a part of project evaluation requirements, each project must collect and report cost as well as effects data related to pilot and demonstration activities.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 2: Research in Social Relationships for Children and Youth with Deaf-Blindness

The purpose of this priority is to support research cooperative agreements to develop, field-test, and disseminate information on social support strategies to improve the social integration of children and youth with deaf-blindness in school, neighborhood, and community settings. The goals of the research projects are (a) to produce validated procedures for the development and maintenance of social relationships that promote positive lifestyle changes among children and youth with deaf-blindness, and (b) to encourage utilization of those procedures in integrated settings by policy makers and program implementers.

Although significant strides have been made in increasing opportunities for social integration of children and youth with deaf-blindness in school and community settings, recent research indicates that many of these individuals have few, if any, friends or social supports outside of their family. Poor interpersonal skills paired with the lack of social supports are reportedly the reasons why many adults with deaf-blindness leave integrated employment settings. Students with deaf-blindness have infrequent and inconsistent interactions with their nondisabled peers in integrated school settings when social interaction programs and supports are absent.

Despite a broad consensus that social integration is of critical importance in the lives of children with deaf-blindness and their families, there is a wide gap between that belief and the use of systematic intervention efforts to promote social integration and support.

There is little empirical information to assist policy makers and program implementers in ensuring that individuals with deaf-blindness are socially integrated in school, neighborhood, work, and community settings.

These projects have the potential to increase social integration and improving the quality of life for individuals with deaf-blindness and their families. Project activities will produce an empirical basis for the selection and utilization of strategies to increase the social integration of children and youth with deaf-blindness in school, neighborhood, community, and employment settings. The projects must generate data-based information that describes the strategies, supports, and conditions that facilitate the development and maintenance of social relationships among people with deaf-blindness and their peers without disabilities.

Project Design: Each project must present a synthesis of relevant extant research to serve as a conceptual and empirical basis for the proposed social relationship research and development activities. Project activities must extend the field's knowledge base on the use of practices that promote social relationships among children and youth with deaf-blindness and their peers in integrated school and community settings. Project activities must be carried out in integrated school and community environments and projects must measure initial levels of social and physical integration in these settings prior to the proposed activity.

Projects must focus on and develop strategies related to one or more of the following:

(a) The nature of social relationships and the development of friendships between individuals with deaf-blindness and their nondisabled peers (e.g., type, quantity, quality, and duration) in integrated school, work, and community settings;

(b) The scope of social support needs among different individuals and how they vary across situations;

(c) The strategies for providing effective support for social relationships in elementary schools, middle and junior high schools, high schools, work settings, neighborhoods, and community recreation programs;

(d) How to create social networks that provide multiple supports across school, neighborhood, and community settings;

(e) Identifying and fostering naturally occurring opportunities where social relationships can develop;

(f) Effective strategies for peer involvement across chronological ages and settings (e.g., preschool, lower elementary, upper elementary, etc.); and

(g) How social relationships, supports, and networks are influenced by transitions and whether they can be maintained during periods of transition—from segregated to integrated programs, from elementary to middle and junior high school, from middle and junior high school to high school, and from school to work.

Projects must demonstrate on-going collaborative relationships among personnel from the settings where the project activities will be implemented, and, as appropriate, among institutions of higher education and other State or local agencies involved in serving students with deaf-blindness.

Procedures to promote involvement of peers, parents, and school personnel (e.g., building administration, general and special educators, related services personnel) and relevant community human service agencies in the proposed project must be clearly delineated.

Close coordination and collaboration is required among the research projects funded under this priority and the Social Relationships Research Institute for Children and Youth with Severe Disabilities priority established under the Program for Children with Severe Disabilities. Department personnel will assist with these collaborative efforts. Project directors and OSEP personnel will meet annually and work to ensure that project findings are shared and disseminated in an organized manner. Projects funded under this priority must contribute to the production of social relationships monographs presenting findings and describing promising practices for promoting social relationships. Primary responsibility for these monographs will be with the Social Relationships Research Institute for Children and Youth with Severe Disabilities established under the Children with Severe Disabilities Program.

Evaluation: Project design and evaluation must employ methodology that can accurately describe the complex nature of social relationships as well as the impact of various social relationship support strategies on student lifestyle outcomes. Projects must use periodic procedural reliability checks and obtain social validity measures for students, peers, parents, and school personnel. To the extent possible, strategies demonstrated to be effective are to be implemented in new settings to determine the replicability of project findings.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

(Program Authority: 20 U.S.C. 1422)

Title of Program: Educational Media Research, Production, Distribution, and Training Program.

CFDA No. 84.026.

Purpose: The purposes of this program are to promote—(1) the general welfare of deaf and hard-of-hearing individuals by (A) bringing to those individuals an understanding and appreciation of films and television programs that play an important part in the general and cultural advancement of hearing individuals; (B) providing through these films and television programs enriched educational and cultural experiences through which deaf and hard-of-hearing individuals can be brought into better touch with the realities of their environment; and (C) providing a wholesome and rewarding experience that deaf and hard-of-hearing individuals may share together; (2) the educational advancement of individuals with disabilities by (A) carrying on research in the use of educational media for individuals with disabilities; (B) producing and distributing educational media for the use of individuals with disabilities, their parents, their actual or potential employers, and other individuals directly involved in work for the advancement of individuals with disabilities; (C) training individuals in the use of educational media for the instruction of individuals with disabilities; and (D) utilizing educational media to help eliminate illiteracy among individuals with disabilities; and (3) the general welfare of visually impaired individuals by (A) bringing to individuals an understanding and appreciation of textbooks, films, television programs, video materials, and other educational publications and materials that play an important part in the general and cultural advancement of visually unimpaired individuals; and (B) ensuring access to television programming and other video material.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Descriptive Video

This priority supports one or more cooperative agreements for the continued implementation and delivery

of descriptive video for individuals who are visually impaired. The purpose of descriptive video is to make media more accessible to individuals with visual impairments by describing events and actions that are not clear from the soundtrack alone. During FY 1990 a study was conducted on the viability and cost effectiveness of descriptive video. This study indicated that, although descriptive video appears to be a useful and viable vehicle in providing people with visual impairments with additional access to television in the form of descriptions of visual images and actions on the television screen that are not sounded, the technology needs continued research and study. Because of the overall costs of producing and broadcasting descriptive video and the fact that descriptive video technology is new and still evolving, it was found to be not commercially viable for national broadcast at the present time. This is analogous to the early days of captioned television and the development of Line 21 closed captioning. The FY 1990 study referred to above recommended a continuation of ongoing activities conducted by public and cable networks with an increase in program offerings while concurrent evaluations are conducted.

Project Design: The projects funded under this priority must:

(a) Identify, select, and implement effective methods and technologies for providing descriptive video programs or movies. These must include methods and technologies for recording, transmission, and reception of descriptive video and must be specific as to the activities and equipment that will be required;

(b) Develop criteria for selecting programs to be video described and made available;

(c) Determine the number of hours of descriptive video programs or movies made available over public or cable television or through home video during each year of the three-year period;

(d) Obtain agreement from participating producers and distributors to permit video description and transmission; and

(e) Implement a comprehensive outreach effort to inform intended consumers of the service and steps necessary to access the service, and other activities necessary to sustain the service, such as educating station managers and producers and promoting their participation and contributions.

Evaluation: Projects must rigorously evaluate the effectiveness of the methods and technologies used in providing descriptive video as well as

barriers encountered and the impact on the intended target populations.

As a part of project evaluation requirements, each project shall collect and report cost as well as effects data related to the implementation and delivery of descriptive video.

Dissemination: Project reports must include specific information about the methods and technologies used to provide descriptive video as well as evaluation information as to the impact, effectiveness, and costs of the methods and technologies. Projects must report their information in a way that is useful to potential service providers as well as consumers. Information must be disseminated to clearinghouses, consumer groups, and other appropriate audiences.

Priority 2: Closed-Captioned Daytime Programming

This priority supports one or more cooperative agreements for the closed-captioning of daytime programming broadcast nationally, so that persons who are deaf or hard of hearing can have access to daytime television programming that contributes to the general, educational, and cultural experiences and advancement of individuals with hearing impairments. These projects will provide access to the shared cultural experience of television to persons who are hearing impaired, particularly the elderly and persons at home during the day, who wish to enjoy daytime television.

The U.S. Department of Education currently sponsors projects that provides access to closed-captioning of news and public information; movies, mini-series, prime time, and specials; sports; and children's programs. In most of these areas the Government's efforts have been significantly supplemented by support from the private sector. On the other hand, little captioned programming is available during daytime hours. The intent of this priority is to provide stimulation to maintain and increase access to daytime television for persons with hearing impairment.

Project Design: Projects must:

(a) Select programs to be captioned, taking into account the preference of consumers for particular programs; the diversity of types of programs broadcast during the day; and the contribution of programs to the general, educational and cultural experiences of individuals with hearing impairments.

(b) Determine the number of television hours to be captioned using funds from this project and the number of hours projected to be captioned using funds from other sources, including matching or in-kind contributions, and a specific

method to be used for each hour, i.e., realtime, off-line, computer-assisted, etc.;

(c) Determine the type and use of backup systems that will ensure successful, timely captioning services; and

(d) Obtain agreement from major commercial or cable networks to permit captioning of their programs.

Evaluation: Projects must implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Priority 3: Special Research, Development and Evaluation Projects

This priority supports projects to expand the effective uses of captioning to enhance the reading and literacy skills of individuals who are deaf or hard of hearing, to enhance the reading and literacy skills of individuals with disabilities, to explore captioning features that make captioning a more effective tool in extending general television programming to persons with disabilities and to adapt and test the effectiveness of multi-media technology in the education of individuals with disabilities.

Project Design: Projects supported by this priority must address one or more of the following areas:

(a) Explore and test uses of captioned television and videos to determine those uses that are effective in developing or improving reading and literacy skills of individuals who are deaf or hard of hearing;

(b) Explore and test uses of captioned television and videos to determine those uses that are effective in improving reading and literacy skills of a broad range of individuals with disabilities, particularly those who have learning disabilities or limited proficiency in English;

(c) Compare and contrast captioning features such as verbatim captioning versus edited captioning, location of captions, highlighting of captions, variable fonts, and variable captioning rates, for extending captioned television to a broad range of viewers with disabilities, including, but not limited to, persons with hearing impairments; and

(d) Adapt and test the effectiveness of a range of media and technologies, including captioned educational television, adapted computer software, and adapted video discs for improving the range of educational experiences, options, and environments for individuals with disabilities, including those who are deaf and hard of hearing.

The Secretary may fund one or more applications in each of these three categories. Projects must:

(1) Address a specific problem or issue;

(2) Select specific activities or technologies to test, compare, or adapt based on previous research or evaluations; and

(3) Target a particular population of individuals with disabilities.

Evaluation: Projects must conduct investigations using methodological procedures that will produce unambiguous findings regarding the impact and relative effectiveness of various captioning efforts. Further, projects must evaluate any dissemination activities to determine their effectiveness in benefiting intended target populations.

As a part of project evaluation requirements, each project shall collect and report cost as well as effects data related to the use of captioning.

Dissemination: Projects must report their information and findings in a way that is useful to potential service providers as well as consumers. Information must be disseminated to clearinghouses, technical assistance organizations, networks, consumer groups and other appropriate audiences.

Program Authority: 20 U.S.C. 1451, 1452.

Title of Program: Postsecondary Education Programs for Individuals with Disabilities.

CFDA No. 84.078.

Purpose: To develop, operate, and disseminate specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

Proposed Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Priority 1: Career Placement Opportunities for Students with Disabilities in Postsecondary Programs

This priority supports projects that enhance the role and capacity of career placement offices that arrange pre-employment opportunities and subsequent employment placements in integrated settings for students with disabilities in community and four-year colleges, universities, technical and vocational institutes, and adult and continuing educational programs.

It is important to increase the awareness of campus-based career placement personnel about the needs of students with disabilities and their employment opportunities. On-campus career placement offices are useful sources of information about career opportunities offered by local, regional, and national businesses and other potential employers. There is a tendency for students with disabilities to be overlooked during regular recruiting activities when career placement offices are contacted by potential employers, especially those from larger corporations. Also, many career placement personnel are insufficiently trained in the special job development techniques which are necessary for successful placements of persons with disabilities.

Project Design: Projects must create and facilitate the cooperative efforts of those who help bring about successful vocational placements for people with disabilities. These collaborative efforts must include extensive involvement of representatives from the disabled student services program office, from the career placement office, from the State vocational rehabilitation agency, from business and industry, and, where appropriate, from the disabled student community itself. The goal of these projects is to enhance the current campus-based activities and capacities of the postsecondary institution career placement offices and their personnel.

Projects supported under this priority must:

(a) Develop or adopt inservice training and orientation programs (curriculum, syllabus, and associated informational materials) for career placement officers, their staff, and faculty, that focus on the awareness and provision of support services and accommodations needed by students with disabilities, not only at the postsecondary educational program but also at various potential work sites; and, further, ensure that this training becomes a part of the institution orientation for new faculty and staff members who replace those who previously had benefitted from this training;

(b) Obtain the involvement of employers by placement officers in campus-based career opportunities, such as specific individual pre-employment interviews or group meetings with representatives of industry; this involvement should include such groups as private industry councils, local Chambers of Commerce, and Governor's and Mayor's Committees on Employment of Persons with Disabilities;

(c) Increase job placement for students with disabilities by the formation and continuation of formal memoranda of understanding, cooperative agreements, or similar documents among disabled student service offices, career placement offices, vocational rehabilitation offices, and local, State, or regional coalitions of representatives of business and industry.

(d) Enhance the career experiences of students with disabilities by facilitating or creating opportunities for needed work experiences, work-study program participation, internships, and summer placements, among others, in order that students with disabilities will be more competitive with their nondisabled peers upon entering the job market;

(e) Provide technical assistance and information on program and work accessibility and accommodations to administrators, faculty, and staff of postsecondary educational programs; secondary school administrators, counselors, and teachers; parents; and persons with disabilities.

The following activities must be addressed in the plan of operation:

Collaboration: Projects must collaborate with employers (or organizations of employers) and with State vocational rehabilitation agencies.

Personnel: Proposed project personnel must have the appropriate training or experience, or both, necessary to achieve the project's goals and objectives. At least one key staff person (Project Director or Project Coordinator) must have experience with, or a background in, career placements of college-aged persons with disabilities and commit more than 50% of his or her time to the project.

Evaluation: Outcome measures developed or used by the project must be specified. These measures must clearly reflect the effectiveness of project strategies in placing the targeted population in permanent and competitive jobs.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Program Authority: 20 U.S.C. 1424(a).

Title of Program: Program for Children with Severe Disabilities. CFDA No. 84.086.

Purpose: To provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for children with severe disabilities, including deaf-blindness.

Proposed Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) at

34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Outreach: Serving Students with Severe Disabilities in Integrated Environments

The purpose of this priority is to improve and ensure the quality of educational service delivery to children and youth with severe disabilities in integrated settings. This priority will support projects that facilitate the adoption and implementation of validated educational models or components of those models in additional sites, including individual or multiple districts.

Across the Nation there are educational programs interested in serving students with severe disabilities in integrated settings. While methods and procedures that have proven ability to effectively address the educational and related service needs of students with severe disabilities in integrated settings have been identified, many educational programs are either unaware of these methods, procedures, and models or the models are not readily available in their schools, communities, or States. Consequently, these programs are often limited in their ability to provide effective educational and related services to students with severe disabilities in integrated settings. This priority would increase the capacity of local school districts or State educational agencies to serve students with severe disabilities in integrated school and community settings as a result of its product development and dissemination, training, or demonstration site-development activities.

Project Design: The practices to be implemented during the outreach activities may focus on, but are not limited to, transition from school to adult life, the use of activity-based curricula, non-aversive behavior management, facilitating social relationships in school and community settings, or strategies that facilitate the integration of students with severe disabilities into neighborhood schools.

The models or components to be implemented must:

(a) Be based on current theory and research and provide evidence of the validity of the model or components;

(b) Match the needs of the proposed sites; and

(c) Describe the process of model implementation in terms of demands of the model (e.g., expected costs, needed personnel, staff training, equipment) upon potential users, sequence of model implementation activities, and perceived ability of model users to satisfy the demands for model adoption.

Outreach activities may include, but need not be limited to (1) product development and dissemination, (2) training, and (3) demonstration site development.

Projects must coordinate their activities with appropriate educational agencies, adult service providers, or personnel. If appropriate, projects must involve students with severe disabilities and their families in the design, implementation, and evaluation of project activities.

Evaluation: Each project must:

(a) Clearly define the outcomes expected from the implementation activity;

(b) Include strategies for evaluating the effectiveness of the implementation following intervention; and

(c) Document changes in the model as a result of implementation across all sites.

Outcome measures must include measures of model effectiveness, user satisfaction, fidelity of implementation, cost benefit analysis, and child change data, if appropriate.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 2: Developing Innovations for Educating Children with Severe Disabilities Full-time in General Education Classrooms

This priority will support three-year research projects designed to develop, implement, and evaluate specific strategies that result in effective special education and related service delivery in inclusive general education elementary classrooms.

As we enter the 1990's there is a strong, accelerating parent and professional movement promoting the full inclusion of students with severe disabilities into age-appropriate general education classes. Providing educational programs that balance full inclusion and social integration with an age-appropriate and functional curricula will require significant change from both general and special education. This restructuring of educational service delivery drives the need for innovations to refine or "stretch" the system as educators investigate strategies to accommodate students with diverse learning characteristics.

Projects must produce a set of tested strategies to provide an empirical basis for utilizing and refining techniques for accommodating students with diverse learning characteristics, including those with severe disabilities, in general education elementary classrooms. Project outcomes include preliminary data-based information that clearly describes the following: (a) the supports and conditions required to provide effective educational and related services; (b) procedures to ensure adequate child progress; (c) social interaction with classmates and peers; (d) the structure of classroom activities and materials to meet multiple instructional needs; and (e) efficient utilization of personnel and resources.

Project Design: Projects must present a synthesis of relevant extant research to serve as a conceptual and empirical basis for the proposed innovative activities. The proposed innovations must extend the field's knowledge base on the use of inclusive practices in general education elementary classrooms. Projects must address—

(a) The supports and conditions required to provide effective educational and related services in general education classrooms; and

(b) How educational and related services can be delivered in general education classrooms to ensure adequate child progress.

Project activities must be carried out in integrated elementary school environments, and projects must measure the initial or baseline levels of social and physical integration in these settings prior to the proposed innovative activities.

The Secretary particularly invites projects that address one or more of the following questions:

(a) What strategies (e.g., cooperative learning groups, peer tutors, circles of friends) promote the active and effective involvement of classmates in inclusive educational programs?

(b) What classroom activities and materials ensure meaningful student participation and meet multiple instructional needs? How are classroom activities and use of materials best structured?

(c) How are personnel best utilized for direct service and technical assistance? What staffing patterns are employed for inclusive educational programs (e.g., use of consultant teacher, paraprofessionals, team teaching) and how do these patterns change over time?

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet

the general priority described in this notice.

Projects must demonstrate on-going collaborative relationships among personnel from the local educational agencies where the innovative activity will be implemented, and, as appropriate, among the State educational agencies, institutions of higher education, and other State or local agencies involved in serving students with severe disabilities. Procedures to ensure involvement of parents and school personnel (e.g., building administration, general and special educators, related services personnel) in the proposed innovation must be developed. It is anticipated that the LEAs involved in the innovation will contribute teaching staff and administrative support. Coordination and collaboration among the projects funded under this priority is encouraged and OSEP personnel will assist in this effort.

Evaluation: Project evaluation must employ methodology that accurately assesses the impact of the innovative strategies on (a) the general education classroom where students with severe disabilities are educated on a full-time basis, and (b) student outcomes, including adaptive behavior and achievement. Projects are encouraged to use quantitative and qualitative research methods to ensure a reliable and thorough analysis of the classroom innovations. Projects must use procedural reliability checks and obtain social validity measures for students, parents, and school personnel. To the extent possible, strategies demonstrated to be effective in the initial setting should be implemented and evaluated in other settings to determine the replicability of project findings.

As a part of project evaluation requirements, each project shall collect and report cost as well as effects data related to the use of the innovative strategies.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 3: Social Relationships Research Institute for Children and Youth with Severe Disabilities

The purpose of this priority is to support one cooperative agreement to establish a Social Relationships Research Institute to develop, field-test, and disseminate information on social support strategies to increase the social integration of children and youth with severe disabilities in school, neighborhood, employment, and community settings. The goals of the

institute are (a) to produce validated procedures for the development and maintenance of social relationships that promote positive lifestyle changes among children and youth with severe disabilities, and (b) to encourage utilization of those procedures in integrated settings by policy makers and program implementers.

Although significant strides have been made in increasing opportunities for social integration of children and youth with severe disabilities in school and community settings, recent research indicates that many of these individuals often have few, if any, friends or social supports outside of their family. Poor interpersonal skills paired with lack of social supports are reportedly the reasons why many adults with severe disabilities leave integrated employment settings. Other studies suggest that students with disabilities have infrequent and inconsistent interactions with their nondisabled peers in integrated school settings when social interaction programs and supports are absent.

Despite a broad consensus that social integration is of critical importance in the lives of children and youth with severe disabilities and their families, there is a wide gap between that belief and the use of systematic intervention efforts to promote social integration and support. There is little empirical information to assist policy makers and program implementers in ensuring that individuals with severe disabilities are socially integrated in school, neighborhood, work, and community settings.

The research institute resulting from this priority will have the potential impact of increasing social integration and improving the quality of life for individuals with severe disabilities and their families. The institute's activities must produce an empirical basis for the selection and utilization of strategies to increase the social integration of children and youth with severe disabilities in school, neighborhood, community, and employment settings. The research institute must generate preliminary data-based information that describes the strategies, supports, and conditions that facilitate the development and maintenance of social relationships among people with severe disabilities and their peers without disabilities.

Project Design: The institute must present a synthesis of relevant extant research to serve as a conceptual and empirical basis for the proposed social relationship research and development activities. The institute's activities must extend the field's knowledge base on the

use of practices that promote social relationships among children and youth with severe disabilities and their peers in integrated school and community settings. Project activities must be carried out in integrated school and community environments and the institute must clearly measure initial levels of social and physical integration in these settings prior to the proposed activity.

The program of research and development activities must be conducted in a manner that clearly demonstrates how the strands of research relate to one another. The program of research activities must address, but is not limited to—

(a) The nature of social relationships and the development of friendships between individuals with severe disabilities and their nondisabled peers (e.g., type, quantity, quality, and duration) in integrated school, work, and community settings;

(b) The scope of social support needs across individuals and how they vary over time and across situations;

(c) The strategies for providing effective support in elementary schools, middle and junior high schools, high schools, work settings, neighborhoods, and community recreation programs;

(d) How to create social networks that provide multiple supports across school, neighborhood, employment, and community settings;

(e) Identifying and fostering naturally occurring opportunities where social relationships can develop;

(f) How strategies for peer involvement vary across chronological ages and settings (e.g., pre-school, lower elementary, upper elementary, etc.); and

(g) How social relationships, supports, and networks are influenced by transitions and whether they can be maintained during periods of transition—from segregated to integrated programs, from elementary to middle and junior high school, from middle and junior high school to high school, and from school to work.

The institute must demonstrate ongoing collaborative relationships among personnel from the settings where the project activities will be implemented, and, as appropriate, among IHEs and other State or local agencies involved in serving students with severe disabilities. Procedures to promote involvement of peers, parents, and school personnel (e.g., building administration, general and special educators, related services personnel) and relevant community human service agencies in the proposed project must be clearly delineated.

Close coordination and collaboration among the research institute project

funded under this priority and projects funded under the Research in Social Relationships priority established under the Services for Children and Youth with Deaf-Blindness Program is required. Department personnel will assist with these collaborative efforts. The research institute project director, project directors of the social relationships research projects, and OSEP personnel shall meet annually and will work together to ensure that project findings are disseminated in a organized manner. The research institute funded under this priority must produce and disseminate at least one monograph concerning the findings and describing promising practices for promoting social relationships. Monographs must include, as appropriate, relevant information and findings from the projects funded under the Research in Social Relationships priority established under the Services for Children and Youth with Deaf-Blindness Program.

Evaluation: Project design and evaluation must use methodology that can accurately describe the complex nature of social relationships as well as the impact of interventions on student lifestyle outcomes. The institute is encouraged to employ both qualitative and quantitative research methodologies to ensure a reliable and thorough analysis of various social relationship support strategies. The institute must employ periodic procedural reliability checks and obtain social validity measures for students, peers, parents, and school personnel. To the extent possible, strategies demonstrated to be effective are to be implemented and evaluated across new settings to determine the replicability of project findings.

The Secretary will approve one cooperative agreement with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the final two years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary also will consider the recommendation of a review team consisting of three external experts selected by the Secretary. The services of the review team are to be performed during the research institute's second year prior to the submission of the third year continuation award. Costs associated with the services of the three-member review team (estimated to be approximately \$3,000 total) are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will

consider, among other factors, the following:

(a) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(b) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 4: Model Inservice Training Projects

The purpose of this priority is to support capacity building projects that develop, demonstrate, evaluate, and disseminate model inservice training activities (and accompanying materials) that will prepare administrators, teachers, paraprofessionals, and related service personnel to provide, coordinate, and enhance services that result in children and youth with severe disabilities being educated in general education classrooms and community settings.

One of the major issues facing special education today is the lack of qualified personnel to meet the educational needs of individuals with severe disabilities. Inservice training is one strategy for meeting the needs of existing personnel by specifically targeting training to identified needs. This strategy can be used to (1) enhance the skills of personnel currently working with students with severe disabilities; (2) supplement training to regular educators; or (3) train personnel who have not previously worked with students with severe disabilities. In addition to meeting the immediate need for trained personnel, this priority will require the packaging of the inservice training model in a way that will increase the likelihood that effective training practices will be adopted by others.

Project Design: Model inservice training projects must provide inservice training for professionals, paraprofessionals, or both, who are currently providing education or related services to children and youth with severe disabilities, or to those individuals who through retraining could provide those educational services. The projects may be State or regional in scope. The projects must (1) delineate a conceptual framework upon which training is to be based, including the provision of services in general education classrooms and community

settings; (2) identify the target audience to be trained, including their roles and responsibilities; (3) identify the changes required in those roles or responsibilities to serve individuals with severe disabilities; (4) identify the skills needed to implement the new roles or responsibilities; (5) determine how the training will meet identified needs within the proposed service area; and (6) determine the content of training and the format for delivery of training activities. In addition to initial training, the projects must include an array of follow-up and support activities that ensure that personnel participating in the training acquire the skills being taught and utilize that knowledge in meeting the education and related service needs of children and youth with severe disabilities in general education classrooms or community settings.

The projects must directly train personnel to facilitate education in the least restrictive educational environment.

The Secretary will give competitive preference (by awarding up to 10 additional points) to projects that do all of the following:

(a) Collaborate with relevant State agencies for the Comprehensive System of Personnel Development under part B of the IDEA;

(b) Assure that inservice trainees will gain credit from the training and that the credit will apply towards a degree, certification, recertification, or licensure; and

(c) Assure through supplemental funding from State or other sources that the inservice training model, if proven effective, will become the basis for, or will be incorporated into, an ongoing system of professional development for personnel serving children and youth with severe disabilities.

The Secretary particularly invites projects that focus on—

(a) Community based, age appropriate, functional skills training;

(b) Nonaversive behavior management in general education and community settings;

(c) Assistive technology to enhance participation and communication in general education and community settings;

(d) Strategies for facilitating interactions between students with severe disabilities and their nondisabled peers; and

(e) Training educational personnel from groups who have been traditionally underrepresented.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute

preference over applications that meet the general priority described in this notice.

Evaluation: Projects must evaluate the inservice training model through direct assessment of participant skills following the training and after a period of time. At least some measures must be based on direct observation of trainees in the educational or community setting using standardized observational rating techniques. Projects must be consistent with personnel standards, certification, or licensing requirements in the States where training is to occur.

As a part of project evaluation requirements, each project shall collect and report cost as well as effects data related to use of the training models.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g). The information resulting from these projects must be packaged to include all materials validated during the model inservice training effort.

Priority 5: State-Wide Systems Change

The purpose of this priority is to support projects that enhance the capacity of States to serve students with severe disabilities (including students with deaf-blindness) in (a) developing, in conjunction with the IDEA part B State plan, activities to improve the quality of special education and related services in the State for children with severe disabilities, including children with deaf-blindness, birth through 21 years of age, and to change the delivery of these services from segregated to integrated environments; and (b) significantly increasing the number of children with severe disabilities (including children with deaf-blindness) the State serves in regular school settings, alongside their same-aged nondisabled peers.

Project Design: Projects under this priority must:

(a) Determine resources available in the State to provide quality services to children with severe disabilities (including children with deaf-blindness), as well as financial resources available through other agencies or parties;

(b) Coordinate activities with the Deaf-Blind State and Multi-State project and the coordinator of services for students with severe disabilities;

(c) Establish services needed to assist these children and youth to achieve their highest potential outcomes in normalized, nonsegregated least restrictive environments. These services must include at a minimum—

(1) Delivery of integrated educational services that include providing children with severe disabilities (including

children with deaf-blindness) who are currently being served in segregated environments with special educational and related services in schools and classes with nondisabled children;

(2) Movement of participating children and youth and integration into less segregated environments with the objective of facilitating the placement of these children in appropriate regular school settings;

(3) Delivery of curricula relevant to education in integrated settings, including the teaching of social integration skills, community referenced skills, and employment skills;

(4) Activities to promote acceptance of children and youth with severe disabilities (including children with deaf-blindness) by the general public through increasing both the quality and frequency of meaningful interaction of these children and youth with nondisabled peers and adults;

(5) Delivery of services to meet the unique needs of children with severe disabilities (including children with deaf-blindness); and

(6) Effective involvement of families in the planning and delivery of services to their children with severe disabilities (including children with deaf-blindness);

(d) Early in the first year of operation, establish a project advisory board having representation of parents of project children with severe disabilities (including parents of project children with deaf-blindness), providers of services to this population, and State and professional organizations, that are responsible for providing significant input on project management procedures; and

(e) As a part of first year activities, formulate and implement formal, written policies and procedures with relevant State, local, and professional organizations for coordinating services provided to the target population of children with severe disabilities (including children with deaf-blindness), including the elimination of overlapping and redundant services.

Projects must provide assurance that the educational settings, in which the project sites are proposed, represent least restrictive environments, including:

- (1) placement in regular school settings;
- (2) age appropriate educational services; and
- (3) integrated community settings.

Evaluation: Projects will be funded through cooperative agreements with the Secretary for a period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the project for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the

Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(a) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient and its subgrantees;

(b) The degree to which the applicant demonstrated activities to improve the quality of special education and related services in the State for children and youth with severe disabilities (including children with deaf-blindness), birth through 21 years of age, and to change the delivery of these services from segregated to integrated environments; and

(c) The effectiveness of the project's activities, including comparing the number of children and youth with severe disabilities (including children with deaf-blindness) in the State who are served in regular school settings, alongside their same-aged nondisabled peers, with the number of children who were served in those settings at the onset of the project.

Projects must implement an evaluation plan that measures (a) the improvement of special education and related services in the State for children and youth with severe disabilities (including children with deaf-blindness); (b) the movement of children and youth with severe disabilities (including children with deaf-blindness) in the State from segregated settings to regular school settings, alongside their same-aged nondisabled peers; and (c) the effectiveness of all project activities.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

(Program Authority: 20 U.S.C. 1424(a))

Title of Program: Secondary Education and Transitional Services for Youth with Disabilities Program.

CFDA No. 84.158.

Purpose: To assist youth with disabilities in the transition from secondary school to postsecondary environments, such as competitive or supported employment, and to ensure that secondary special education and transitional services result in

competitive or supported employment for youth with disabilities.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Model Demonstration Projects to Identify, Recruit, Train, and Place Youth with Disabilities Who Have Dropped Out of School

This priority supports model demonstration projects implementing effective strategies to identify, recruit, train, and place youth with disabilities who have dropped out of school. Projects must develop techniques for locating and recruiting youth with disabilities who have dropped out of school and must identify the unique curriculum modifications and supports that are needed to ensure their program participation and completion.

This priority is being established because of high dropout rates of youth with disabilities. States reported to OSEP that during the 1988-89 school year approximately 25% of youth who exited special education were dropouts. Ninety percent of these dropouts were sixteen or seventeen years of age. Studies by State and local education agencies indicate that the dropout rate of students with disabilities is between 31% and 35%, with even higher rates in urban areas. Other studies have shown that low socioeconomic status is also related to high dropout rates among students with disabilities. Youth in special education drop out of school at a higher rate than their nondisabled peers. Poor academic performance, the presence of a disability, attitude of the youth toward school, and disciplinary problems are cited as major reasons for dropping out.

In FY 1990, projects were funded under the Research in Education of the Handicapped Program that focus on junior-high-school-aged students who are certified as learning disabled or emotionally disturbed and are at risk of leaving school prior to completion. These projects will design and field test interventions to enhance students' continued participation in school. However, these projects do not address students who have already dropped out of school. Although training and employment projects currently supported by the Secondary Education and Transitional Services Program are

required to serve youth who have recently left school, the dropout population has not been a primary focus.

Project Design: The demonstration models for youth who have dropped out of school must be based on a conceptual framework that is founded on tested theory and research, and that provides a basis for the unique strategies and approaches that are incorporated into the model. Significant efforts have occurred to demonstrate that youth with disabilities can make successful transitions from school to the workplace. However, attention must be given to the development and validation of unique strategies to locate and motivate dropouts to participate in programs intended to provide them the skills necessary to live and work in their communities.

The strategies identified in the project design should address solutions to the problems associated with the transition from school to integrated postsecondary environments, such as competitive or supported employment, postsecondary education, vocational training, continuing education, adult services, or community-based living alternatives. Particular attention must be placed on (1) the identification and recruitment of youth who drop out; (2) the development of responsive programs to enlist and maintain their participation; and (3) the assistance and support necessary to ensure program completion.

Projects supported under this priority must emphasize one or more of the following activities:

(a) Developing working agreements and mechanisms between public schools and adult programs in integrated, age appropriate environments for the provision of special education or related services. These programs could provide services to youth until they reach the States' maximum age for receiving special education services;

(b) Providing intensive instruction to prepare the dropout population with functional skills necessary to live and work in the community. The instruction must have a direct impact on a youth's ability to improve his or her potential for attaining successful outcomes;

(c) Identifying individuals, agencies, or community-based organizations that may have significant influence in encouraging youth to participate in appropriately designed transition programs;

(d) Incorporating successful Projects With Industry (PWI) models or components of models supported under the Job Training Partnership Act (JTPA) into the design of the proposed transition programs and services; and

(e) Developing and implementing procedures to (1) analyze the various factors that influence the individual's decision to drop out; (2) profile significant characteristics and develop indicators of "risk of dropping out" for youth currently enrolled in school; and (3) modify or change school and curriculum barriers to enhance the participation of youth who have left school based on that information.

The following activities must be included in the implementation of the project:

Follow-up and Long-Term Support: Projects that place youth with disabilities in jobs or community residential settings must provide for sufficient follow-up and linkage to providers of long-term support.

Setting: Services must be provided in integrated, age-appropriate environments in order to reduce or eliminate the stigma that may have been associated with previous non-responsive environments. These environments would facilitate the interaction between project participants and their nondisabled peers and would include community colleges and other agencies that offer postsecondary adult education services.

Collaboration: Projects must collaborate with the following persons and entities in the design, implementation, and testing of the model:

(1) Prospective project participants and adults with disabilities or advocacy organizations for persons with disabilities, through such activities as advisory committees.

(2) Employers, State vocational rehabilitation agencies, and other providers of adult services.

If the applicant is not a local educational agency, a clear statement of commitment from the local educational agency indicating access to student records (subject to the requirements of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g)), willingness to participate in the program, and assurance to restructure current practices based on project outcomes, must be provided by the participating agency.

Personnel: At least one key staff person (Project Director or Project Coordinator) must have a background in the implementation of programs for school dropouts with disabilities and commit more than 50 percent of his or her time to the project.

Evaluation: Outcome measures must be developed and used by the project to determine how effective the strategies are in keeping students in an educational program and preparing the

targeted population to live and work in the community.

As a part of project evaluation requirements, each project shall collect and report cost as well as effects data related to use of the strategies demonstrated.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 2: Model Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination

The purpose of this priority is to support model demonstration projects that identify the skills and characteristics necessary for self-determination, as well as the in-school and out-of-school experiences that lead to the development of self-determination. Self-determination refers to the attitudes and abilities that lead individuals to define goals for themselves and to take the initiative in achieving those goals. Some of the personal characteristics associated with self-determination are assertiveness, creativity, self-advocacy, and decision-making.

This priority is being proposed because of the many pervasive stereotypes that indicate that persons with disabilities are incapable of making decisions that affect their lives. The lack of involvement of persons with disabilities in program and policy decision-making is assumed to stem from the lack of decision-making at the individual level. Decisions affecting persons with disabilities have traditionally been made by others. Children and youth with disabilities typically proceed from having parents make decisions for them to having doctors, social workers, or other support personnel make decisions for them. Many of those who have attended more segregated educational programs often find their ability to make their own decisions even more restricted. This sometimes results in persons with disabilities leaving school unprepared and confused when confronted with the need to take responsibility for the decisions affecting their lives.

Project Design: Projects must involve youth with disabilities, their families, and adults with disabilities in developing a model that incorporates (1) the types of experiences and responsibilities that are important in developing the skills and characteristics necessary for self-determination; and (2) the range of opportunities or potential opportunities in school and out of school in integrated, community settings that could provide these experiences that

develop self-determination. Projects must then develop strategies to systematically involve youth with disabilities in the types of activities that foster assertiveness, creativity, self-advocacy, and other skills associated with self-determination. Projects must also develop and test strategies to assist families and service providers in understanding the importance of self-determination for students with disabilities and to accept and support changes in roles and responsibilities as youth with disabilities exercise self-determination.

Projects supported under this priority must emphasize one or more of the following activities:

(a) Identifying or developing and testing strategies for direct instruction of the skills necessary for self-determination by providing in-school and out-of-school experiences that lead to improved abilities to engage in activities such as self-advocacy, defining and achieving goals, assertiveness, etc.

(b) Using persons with disabilities and nondisabled peers to act as role models and to demonstrate and guide project participants in appropriate behavior consistent with the principles of self-determination.

(c) Encouraging the active participation of youth with disabilities in the identification, planning, implementation, and evaluation of all their present and future service needs.

(d) Involving youth and adults with disabilities in structured activities or a series of activities to assist families and service providers in understanding the importance of self-determination for students with disabilities and to accept and support changes in roles and responsibilities as this population exercises the principles of self-determination.

(e) Identifying or developing and testing other innovative strategies that meet the intent of this priority.

Collaboration: Projects must collaborate with the following persons or entities in the design, implementation, and testing of the project: prospective project participants, adults with disabilities, and advocacy organizations for persons with disabilities.

Personnel: At least one key staff person (Project Director or Project Coordinator) must have a background in self-advocacy or consumer organization and commit more than 50% of his or her time to the project. It is strongly suggested that at least one person with a disability be employed as one of the key project staff.

Evaluation: Outcome measures must be developed and used by the project to

determine how effective the strategies are in providing youth with disabilities with the skills associated with self-determination.

As a part of project evaluation requirements, each project shall collect and report cost as well as effects data related to teaching skills necessary for self-determination.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 3: Research Projects on the Transition of Special Populations to Integrated Postsecondary Environments

This priority supports research projects on effective strategies to provide transitional services to youth with disabilities, ages sixteen through twenty-one, who have membership in a particular special population. Projects must focus on at least one of the following special populations: Adjudicated youth, youth with serious emotional disturbance, and youth with severe physical disabilities (including youth with traumatic brain injury).

This priority is being established because strategies focusing on these populations have generally not been represented in the efforts supported to date by this program. According to the literature and past project experience, the transition needs for these populations are the most difficult to accommodate and they have limited potential for successful vocational and living outcomes. A few practices have been developed that have improved the chances of success for these populations. Technological devices and machine adaptations have increased the ability of those with severe disabilities to perform complex job tasks. Innovative behavioral techniques have reduced aberrant behavior in youth who are seriously emotionally disturbed. Training and placement in "real" jobs in the community have reduced the recidivism rate of adjudicated youth with disabilities. However, these practices tend to be expensive and have not been synthesized into models that can address a variety of circumstances and be implemented in typical settings.

Project Design: The strategies identified in the project design must provide solutions to the problems associated with the transition from school to integrated postsecondary environments, such as competitive or supported employment, postsecondary education, vocational training, continuing education, adult services, or community-based living alternatives. Particular attention must be placed on the needs of students who are transitioning from one setting to another

or to multiple settings. For example, the needs for adjudicated youth may require multiple transitions from public schools or other institutions, from the institution to other institutions, and from the institution to the workplace.

Projects supported under this priority must emphasize one or more of the following activities:

(a) Identifying or developing and testing strategies for transitional service programs that focus on individualized transition case management; vocational training; and recreational, leisure, or social skills.

(b) Conducting comprehensive follow-up studies for the targeted population and designing exemplary transitional services based on the findings.

(c) Developing and testing the feasibility of cooperative efforts between education agencies and adult service agencies to provide comprehensive transitional services to the target population.

(d) Identifying or developing and testing strategies for the transfer of assistive technology devices (communication, adaptive equipment, etc.) from the educational environment to employment and other community settings.

The following activities must be addressed in the implementation of the project:

Follow-up and Long-Term Support: Projects that place youth with disabilities in jobs or community residential settings must provide for sufficient follow-up and linkages to providers of long-term support.

Setting: Projects must develop transition strategies in integrated community settings rather than separate programs. Projects are encouraged to use consortia or multi-site approaches to recruit a sufficient number of project participants.

Collaboration: Projects must collaborate with the following persons or entities:

(1) Prospective project participants and adults with disabilities must be involved in the design, implementation, and testing of the project outcomes.

(2) If appropriate, parents and other family members must be involved in the transition process.

(3) Employers, State vocational rehabilitation agencies, and other providers of adult services must be involved in the design, implementation, and testing of the project outcomes.

Personnel: At least one key staff person (Project Director or Project Coordinator) must have a background in research methodology and commit more

than 50% of his or her time to the project.

Evaluation: Outcome measures must be developed and used by the project to determine how effective the strategies are in preparing the targeted population to succeed in integrated postsecondary environments.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Priority 4: Institute to Evaluate and Provide Technical Assistance to States Implementing Cooperative Projects to Improve Transition Services

This priority supports a five-year cooperative agreement with an institution of higher education or nonprofit public or private organization to establish an institute to provide evaluation and technical assistance to States implementing cooperative projects to improve transition services authorized under section 626(e) of the IDEA. Applications submitted under this priority will be evaluated using the selection criteria at 34 CFR 326.32.

Project Design: The project must —

(a) Evaluate the outcomes of the transition services resulting from the activities of the cooperative projects, including the effect of the services on postsecondary education, job training, employment, and other appropriate outcomes;

(b) Evaluate the impact of the requirement to include in the individualized education program a statement of needed transition services;

(c) Evaluate the extent to which, in the provision of the transition services, agencies are cooperating effectively, including evaluation of the extent of coordination (1) of the staff of the agencies, (2) of procedures regarding confidentiality, (3) of assessment of needs, (4) of referrals, and (5) regarding databases and training;

(d) Evaluate the extent to which obstacles exist regarding cooperation and coordination among agencies in the provision of the transition services, and the extent to which Federal and State law creates disincentives to that cooperation and coordination;

(e) Evaluate the extent to which the transition services have been provided in a cost-effective manner;

(f) Determine the technical assistance needed by each participating State and develop individual State technical assistance plans detailing strategies and activities that will be carried out for improving transition services;

(g) Make recommendations on the manner in which the program under Section 626(e) of the IDEA can be improved; and

(h) Provide information to be included in the annual report under Section 618(g) of the IDEA, which reports the activities and results associated with the Institute's activities.

Specifically, the institute will develop and implement the following evaluation and technical assistance activities:

Evaluation: The evaluation activities must consist of several levels of data gathering and analysis. First, the institute must access data collected by the States receiving cooperative grants and conduct analyses of aggregate data. To the extent appropriate, the institute must conduct meta-analyses of intervention effects of the projects or subsets of the projects. Second, the institute must analyze each project in terms of methodology used to determine State needs and activities to develop, implement, and improve systems to provide transition services for youth with disabilities. Third, the institute must assess how States improve and increase the working relationship among education personnel, both within LEAs and postsecondary training programs, relevant State agencies, employers, rehabilitation personnel, local and State employment agencies, local Private Industry Councils authorized by the Job Partnership Development Act, and youth with disabilities. This must include the evaluation of strategies to identify and achieve consensus on the general nature of service needs and the specific application of transition services to meet the needs of youth with disabilities. Fourth, the institute must evaluate the impact of including transition services in students' Individualized Education Programs (IEPs) and identify which segments of the population are most difficult to provide transition services. Finally, the institute must evaluate the extent to which the transition services have been provided in a cost effective manner.

Technical Assistance: The institute must provide technical assistance to State grantees to enable them to plan and implement their cooperative grant programs. The technical assistance must include activities to assist grantees—

(1) In assessing the current availability, access, and quality of transition services for youth with disabilities and determine how, over five years, the State will improve availability, access, and quality of transition services;

(2) In determining strategies for using grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition from other sources;

(3) In providing early ongoing information and training for those

involved with or who could be involved with transition services;

(4) In providing training for eligible youth that matches labor market needs in their communities;

(5) In providing community experiences for youth with disabilities and to enable education agencies to make initial transition with students;

(6) In clearly defining the delivery system that will result from their projects and analyze in detail how it will differ from current services and the current delivery system; and

(7) In improving the evaluation of their projects. This technical assistance must include information pertaining to program documentation methods; selection of measurement instruments; data collection methods; data analysis procedures; and formats for reporting the results of program evaluation in a manner that permits aggregation and synthesis of information and development of recommendations on how the program can be improved.

The evaluation and technical assistance activities must include at least one on-site visit to projects during each 12-month period. However, it is anticipated that less expensive mechanisms (mail, telephone, annual meetings) will be the predominant methods of providing technical assistance.

In carrying out its evaluation and technical assistance activities, the institute must provide evaluation training and experiences for at least three graduate students annually. Graduate students must include members of underrepresented populations.

Period of Award: The Secretary will approve one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team will be performed during the last half of the institute's second year, and may be included in that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team must be paid for with project funds. In developing its recommendation, the

review team must consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the institute; and

(2) The degree to which the institute's evaluation designs and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Dissemination: Projects must prepare and deliver reports as described at 20 U.S.C. 1409(g).

Program Authority: 20 U.S.C. 1425.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to strengthen federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and action for this program.

Catalog of Federal Domestic Assistance Numbers: Early Education Program for Children with Disabilities, 84.024; Services for Children with Deaf-Blindness, 84.025; Educational Media Research, Production, Distribution, and Training Program, 84.026; Postsecondary Education Programs for Persons with Disabilities, 84.078; Program for Children with Severe Disabilities, 84.086; Secondary Educational and Transitional Services for Youth with Disabilities Program, 84.158)

Dated: February 24, 1992.

Lamar Alexander,
Secretary of Education.

[FR Doc. 92-7886 Filed 4-7-92; 8:45 am]

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DEPARTMENT OF EDUCATION

Office of Special Education Programs

[CFDA NOS.: 84.024, 84.025, 84.026, 84.078, 84.086, and 84.158]

Notice Inviting Applications for New Awards Under Certain Direct Grant Programs for Fiscal Year 1992

Note to Applicants

This notice is a complete application package. The notice contains information, application forms, and instructions needed to

apply for a grant under these competitions. The priorities for these programs are published in a separate part of this Federal Register.

The estimates of funding levels in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the following program regulations:

Early Education Program for Children with Disabilities (CFDA No. 84.024) 34 CFR part 309.
Services for Children with Deaf-Blindness (CFDA No. 84.025) 34 CFR part 307.
Educational Media Research, Production, Distribution and Training (CFDA No. 84.026) 34 CFR part 332.
Postsecondary Education Programs for Individuals with Disabilities (CFDA No. 84.078) 34 CFR part 338.
Program for Children with Severe Disabilities (CFDA No. 84.086) 34 CFR part 315.
Secondary Educational and Transitional Services for Youth with Disabilities Program (CFDA No. 84.158) 34 CFR part 326.

EARLY EDUCATION PROGRAM FOR CHILDREN WITH DISABILITIES

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds | Estimated range of awards | Estimated size of awards | Estimated number of awards | Project period in months |
|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|---------------------------------------|-----------------|---------------------------|--------------------------|----------------------------|--------------------------|
| Early Childhood Demonstration Project (CFDA 84.024B). | 5-22-92 | 7-22-92 | \$1,040,000 | \$120,000-140,000 | \$130,000 | 8 | Up to 60. |
| Outreach Projects (CFDA 84.024D) | 5-21-92 | 7-21-92 | 2,000,000 | 120,000-140,000 | 130,000 | 15 | Up to 36. |
| Experimental Projects (CFDA 84.024H) | 5-20-92 | 7-20-92 | 800,000 | 190,000-210,000 | 200,000 | 4 | Up to 36. |
| Training of Early Intervention Services Providers through Training of Faculty from Institutions of Higher Education (CFDA 84.024P). | 5-26-92 | 7-27-92 | 1,000,000 | 240,000-260,000 | 250,000 | 4 | Up to 36. |
| Early Childhood Research Institute: Services Implementation and Capacity for Providing Early Intervention Services (CFDA 84.024T). | 5-27-92 | 7-27-92 | 750,000 | 750,000 | 750,000 | 1 | Up to 60. |

Selection Criteria

The Secretary uses the following criteria to evaluate an application under the Early Education Program for Children with Disabilities. The maximum score for all the criteria is 100 points.

(a) Importance. (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The extent to which the project is based on previous research findings related to the problem or issue;

(iii) The numbers of individuals who will benefit; and

(iv) How the project will address the identified problem or issue.

(b) Impact. (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with disabilities, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) Technical soundness. (35 points)

(1) The Secretary reviews each application to determine the technical soundness of the project plan;

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure

that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects, in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practice leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by parts B and H of the Act and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other than those available through this part;

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timeliness for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objective and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

Eligible Applicants

Public agencies and nonprofit private organizations may apply for an award under any of the priorities. Profit making organizations may also apply for an award under the Model Inservice Training competition.

(Program Authority: 20 U.S.C. 1423)

SERVICES FOR CHILDREN WITH DEAF-BLINDNESS

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds | Estimated range of awards | Estimated size of awards | Estimated number of awards | Project period in months |
|----------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|---------------------------------------|-----------------|---------------------------|--------------------------|----------------------------|--------------------------|
| State and Multi-State Projects for Children with Deaf-Blindness and Optional Pilot Projects for Children with Deaf-Blindness (CFDA 84.025A). | 5-22-92 | 7-22-92 | \$9,338,000 | \$20,000-600,000 | \$191,000 | 49 | Up to 36. |
| Research in Social Relationships for Children and Youth with Deaf-Blindness (CFDA 84.025R). | 5-22-92 | 7-22-92 | 525,000 | 170,000-180,000 | 175,000 | 3 | Up to 36. |

Selection Criteria

The Secretary uses the following criteria to evaluate an application for a State or multi-State application under the Services for Children with Deaf-Blindness Program. The maximum score for all the criteria is 100 points.

(a) *Justification for the project, extent of need, and expected impact.* (15 points) The Secretary reviews each application to determine the justification

for the proposed activities in each State, based on the extent of State need for and expected impact from the provision of services and technical assistance, including consideration of—

(1) The age, number, and location of children with deaf-blindness in the State to whom the State is not obligated to provide a free appropriate public education under part B of the IDEA, to whom the State is not providing special educational and related services under

some other authority, and to whom the applicant proposes to provide services;

(2) The specific actions needed for the provision of early intervention, educational, and related services to children with deaf-blindness based on the State's plan for delivery of services to students with handicaps required under parts B and H of IDEA;

(3) The specific actions needed for the provision of technical assistance

addressed by the project based on the State's plan for provision of technical assistance to providers of services to children with deaf-blindness;

(4) The expected benefits to be gained by providing the early intervention, educational, and related services to children with deaf-blindness to be served by the project, their parents and service providers; and

(5) The expected benefits to be gained by meeting the technical assistance needs of service providers to be assisted by the project.

(b) *Quality of services and technical assistance.* (40 points) The Secretary reviews each application to determine the quality of the plan to provide services and technical assistance in each State to be served, including—

(1) The quality of the design of the project for providing each of the early intervention, educational, and related services described under 34 CFR 307.11(a)(1), and for providing technical assistance as described under 34 CFR 307.11(a)(2);

(2) The extent to which the applicant's plan for providing services and technical assistance implements current research findings and exemplary practices including arranging for services that are age-appropriate for project participants, and providing for the maximum integration of children with deaf-blindness in the least restrictive environment;

(3) How well the objectives of the project respond to the needs of children with deaf-blindness in the State, their parents, and service providers;

(4) The extent to which the plan of management is effective and ensures proper and efficient provision of early intervention, educational, and related services, and technical assistance, and reflects an analysis of the service needs of children with deaf-blindness in the State;

(5) How well the objectives of the project relate to the purpose of program;

(6) How the project will assist the State in developing and implementing the State's Comprehensive Systems of Personnel Development required under parts B and H of IDEA;

(7) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition;

(8) The quality of the applicant's plan for providing early intervention, consultative, and training services for families of children with deaf-blindness as described in 307.11(a)(1)(iii);

(9) The quality of the applicant's plan to involve parents in the development

and delivery of appropriate services to their children with deaf-blindness; and

(10) The extent to which services provided children birth through two years of age meet the requirements of part H of the IDEA.

(c) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project for the provision of services to children with deaf-blindness and technical assistance to agencies, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The experience among key personnel referred to in paragraphs (c) (1) and (2) of this section, relevant to the provision of quality educational services to children with deaf-blindness in less restrictive environments;

(4) The time that each person referred to in paragraphs (c) (1) and (2) of the section will commit to the project; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) The extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine for technical assistance, and direct services where appropriate, in each State to be served, the extent to which—

(1) The budgets are adequate to support activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) Costs reflect—

(i) The time anticipated to be spent by each staff member for the provision of services described under § 307.11(a)(1) and costs for contracted and consultative services, travel costs, and other direct costs;

(ii) The time anticipated to be spent by each staff member for the provision of technical assistance under § 307.11(a)(2), and costs for contracted and consultative services, travel, and

other related expenditures for technical assistance activities; and

(iii) The time anticipated to be spent for administrative services.

(f) *Coordination.* (5 points)

The Secretary reviews each application to determine the adequacy of the applicant's procedures for initiating and maintaining coordination in each State to be served with—

(1) Related activities funded from grants, contracts, and cooperative agreements awarded under parts C, D, E, F, and G of the IDEA; and

(2) Relevant agencies, organizations, and institutions having responsibility to deliver services to children with deaf-blindness in the State, including State education agencies and other service providers under parts B and H of the IDEA and section 1221 *et seq.* of title I of the Elementary and Secondary Education Act of 1965.

(g) *Dissemination.* (5 points) The Secretary reviews each application to determine the adequacy of the applicant's procedures for disseminating significant project information within the State(s) to providers of services to children with deaf-blindness.

Eligible Applicants: Public or nonprofit private agencies, institutions, or organizations may apply for an award under this priority.

(Authority: 20 U.S.C. 1422)

Selection Criteria

The Secretary uses the following criteria to evaluate the quality of an application for Research Projects and Pilot Projects submitted under the Services for Children with Deaf-Blindness program. Each application may receive up to a total of 100 points.

Note: The Selection Criteria that are not applicable to the competitions contained in this notice have been removed. See 34 CFR 307.36 for the complete selection criteria.

(a) *Importance and impact.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part, including—

(i) The significance of the problem or issues to be addressed;

(ii) The extent to which the project is based on previous results, research and evaluation findings, or other information related to the problem or issue;

(iii) The contribution that project findings or products will make to current knowledge and practice; and

(iv) The extent to which findings, information, or products of the project will be designed to promote their

adaptation by and usefulness to others in conducting related projects.

(2) In determining the extent of the importance and impact of the application, the Secretary also considers the relevance of proposed activities in addressing the unique needs of children targeted by the project.

(3) In determining the importance and impact of the application the Secretary considers the extent to which the project addresses the unique needs of children with disabilities from minority backgrounds.

(b) *Technical soundness.*

Pilot projects. (15 points)

Research projects. (30 points)

(1) The Secretary reviews each application to determine the technical soundness of the project, including—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, or disabling conditions; and

(iii) The anticipated outcomes.

(2) In determining the technical soundness of an application, the Secretary also considers—

(i) For pilot projects under 34 CFR 307.14—

(A) The correlation with and relevance to the activities under 34 CFR 307.11 for a State or multi-State project; and

(B) The extent to which practices of the pilot project can be adopted in other settings within the State;

(ii) For research projects—

(A) The comprehensiveness of the review of research to the problem or issues to be addressed by the project and to the nature of the population to be included in the project;

(B) The theoretical soundness of the conceptual framework and research hypotheses upon which the research is to be conducted;

(C) The appropriateness of the data analysis, procedures, and instrumentation;

(D) The effectiveness of the research design in testing the research hypotheses; and

(E) How the anticipated research results can be utilized in subsequent research or demonstration projects, if applicable.

(c) *Plan of operation.*

Pilot projects. (30 points)

Research projects. (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The extent to which the plan of management is effective for the type of project proposed and ensures proper and efficient administration of the project;

(ii) The adequacy of the applicant's resources and plan for use of resources and personnel to achieve project objectives;

(iii) How the budget proposed by the applicant is adequate to support the activities and that the costs are reasonable in relation to the objectives of the project;

(iv) The adequacy of the applicant's procedures for initiating and maintaining coordination with relevant State, local and professional organizations and agencies, for the purpose of furthering achievement of the project objectives;

(v) The adequacy of the applicant's plan to involve project participants with disabilities and, as appropriate, their family members in the development, implementation, and on-going review of project outcomes; and

(vi) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation.

(d) *Key personnel.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) Strategies of the applicant to identify and recruit personnel with disabilities or from traditionally under-represented groups.

(2) In determining the qualifications of each person referred to in paragraphs (d)(1) (i) and (ii) the Secretary also considers—

(i) Experience and training in conducting, documenting, and applying the types of activities to be conducted; and

(ii) Knowledge of the results and findings of relevant projects and potential for application of this information in addressing the unique needs of the children with deaf-blindness to be included in the project.

(e) *Evaluation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating the project, including—

(i) The adequacy of the applicant's plan to determine, to the extent relevant, the effectiveness of the project in achieving measurable change and positive outcomes for children with deaf-blindness who were served by the project and others for whom the project was designed to benefit;

(ii) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation; and

(iii) The procedures for recording, reviewing, analyzing, and interpreting for relevant audiences, data generated through conducting project activities.

Eligible Applicants: Public or nonprofit private agencies, institutions, or organizations are eligible to apply for an award.

(Authority: 20 U.S.C. 1422)

EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds | Estimated range of awards | Estimated size of awards | Estimated number of awards | Project period in months |
|------------------------------------------------------------------------|------------------------------------------|---------------------------------------|-----------------|---------------------------|--------------------------|----------------------------|--------------------------|
| Descriptive Video (CFDA 84.026B) | 5-21-92 | 7-21-92 | \$500,000 | \$125,000-250,000 | \$250,000 | 2 | Up to 36. |
| Closed-Captioned Daytime Programming (CFDA 84.026S). | 5-21-92 | 7-21-92 | 850,000 | 400,000-650,000 | 425,000 | 2 or less | Up to 36. |
| Special Research, Development, and Evaluation Projects (CFDA 84.026R). | 5-21-92 | 7-21-92 | 700,000 | 150,000-200,000 | 175,000 | 4 | Up to 18. |

Note: Under CFDA 84.026S, as written, a single award could be made for an estimated total of up to \$850,000.

Selection Criteria

The Secretary uses the following criteria to evaluate an application under the Educational Media Research, Production, Distribution, and Training Program. The Secretary awards up to 100 possible points for these criteria.

(a) Plan of operation. (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Individuals with disabilities;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(b) Quality of key personnel. (20 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under represented, such as—

(A) Individuals with disabilities;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) Budget and cost effectiveness. (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) Evaluation plan. (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of

evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) Adequacy of resources. (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources for the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Need. (20 points)

(1) The Secretary reviews each application for information that shows the need for the project.

(2) The Secretary looks for information that shows—

(i) The need for the proposed activity with respect to the disabling condition served or to be served by the applicant;

(ii) The potential for using the results in other projects or programs.

(g) Marketing and dissemination. (5 points)

(1) The Secretary reviews each application for information that shows adequate provisions for marketing or disseminating results.

(2) The Secretary looks for information that shows—

(i) The provisions for marketing or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

Eligible Applicants: Profit and nonprofit public and private agencies, organizations, and institutions are eligible to apply for a grant.

(Authority: 20 U.S.C. 1451, 1452)

Postsecondary Education Programs for Individuals With Disabilities

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds | Estimated range of awards | Estimated size of awards | Estimated number of awards | Project period in months |
|---------------------------------------------------------------------------------------------------------|------------------------------------------|---------------------------------------|-----------------|---------------------------|--------------------------|----------------------------|--------------------------|
| Career Placement Opportunities for Students with Disabilities in Postsecondary Programs (CFDA 84.078C). | 5-21-92 | 7-21-92 | \$2,000,000 | \$90,000-110,000 | \$100,000 | 20 | Up to 36. |

Selection Criteria

The Secretary uses the following criteria to evaluate applications under Postsecondary Programs for Individuals with Disabilities. The maximum score for all the criteria is 100 points.

(a) Plan of operation. (25 points)

(1) The Secretary reviews each application for information that shows

the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project.

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project

participants who are members of groups that have been traditionally underrepresented, such as—

- (A) Members of racial or ethnic minority groups;
- (B) Women;
- (C) Individuals with disabilities; and
- (D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

- (A) Members of racial or ethnic minority groups;
- (B) Women;
- (C) Individuals with disabilities; and
- (D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Continuation of program.* (5 points)

(1) The Secretary reviews each application for information that shows that the activities to be supported are likely to be continued after Federal funding ends.

(2) The Secretary looks for information that shows the likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of Federal funding, as measured by

evidence of financial and other commitment of the applicant to the program.

(g) *Importance.* (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project is nationally important in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issues to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue, and in remediating or compensating for it;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(h) *Impact.* (15 points) The Secretary reviews each application for information that shows the probable impact of the proposed research or demonstration activities in improving postsecondary education for individuals with disabilities, including—

(1) The contribution that the research or demonstration findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

Eligible Applicants: State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies are eligible to apply for an award.

(Program Authority: 20 U.S.C. 1424a)

PROGRAM FOR CHILDREN WITH SEVERE DISABILITIES

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds | Estimated range of awards | Estimated size of awards | Estimated number of awards | Project period in months |
|----------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|---------------------------------------|-----------------|---------------------------|--------------------------|----------------------------|--------------------------|
| Outreach—Serving Students with Severe Disabilities in Integrated Environments (CFDA 84.086U). | 5-22-92 | 7-22-92 | \$405,000 | \$125,000-140,000 | \$135,000 | 3 | Up to 36. |
| Developing Innovations for Educating Children with Severe Disabilities Full-time in General Education Classrooms (CFDA 84.086D). | 5-22-92 | 7-22-92 | 525,000 | 170,000-180,000 | 175,000 | 3 | Up to 36. |
| Social Relationships Research Institute for Children and Youth with Severe Disabilities (CFDA 84.086A). | 5-22-92 | 7-22-92 | 600,000 | 600,000 | 600,000 | 1 | Up to 60. |
| Model Inservice Training Projects (CFDA 84.086R). | 5-22-92 | 7-22-92 | 495,000 | 155,000-170,000 | 165,000 | 3 | Up to 36. |
| Statewide Systems Change (CFDA 84.086J)..... | 5-22-92 | 7-22-92 | 1,000,000 | 210,000-260,000 | 250,000 | 4 | Up to 60. |

Note: Applications submitted under 84.086D and 84.086A will be evaluated under the selection criteria for "Research".

Applications submitted under 84.086U, 84.086R and 84.086J will be evaluated under the selection criteria for "Demonstration and Training".

Selection Criteria for Research Projects

The Secretary uses the following criteria to evaluate an application for a research project under the Program for Children with Severe Disabilities. The maximum score for all criteria is 100 points.

(a) *Importance and expected impact of the research.* (20 points) The Secretary reviews each application to determine the extent to which the project will develop new knowledge in understanding and effectively meeting the needs of children with severe disabilities, including the extent to which—

(1) The programmatic research areas proposed by the applicant represent critical areas of investigation, or problems whose solution would have greatest impact on improving services to children with severe disabilities; and

(2) The specific questions to be addressed in the project are likely to generate knowledge needed for bringing about a major change in understanding of the topical area.

(b) *Technical soundness of the project.* (15 points)

(1) The Secretary reviews each application to determine the technical soundness of the research plan, including—

- (i) The design;
- (ii) The proposed sample;
- (iii) Instrumentation; and
- (iv) Data analysis procedures.

(2) The Secretary also reviews each application for the relevance of its proposed training efforts, including—

- (i) Strategies for provision of training; and
- (ii) Relationships between the applicant, other organizations or agencies providing training in coordination with the applicant, and trainees receiving training from the applicant.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in conducting, documenting, and applying research pertaining to children with severe disabilities;

(ii) Awareness of relevant research findings and demonstration project results pertaining to other children with disabilities and the potential for use of the findings and results with children with severe disabilities; and

(iii) Experience in communicating research findings to service providers of children with severe disabilities and in assisting these providers with effective application of the findings.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Adequacy of resources.* (5 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Provides a clear description of the content, intended audiences, and timeliness for production of all project documents and other products that the applicant will disseminate.

Selection Criteria for Demonstration and Training Projects

The Secretary uses the following criteria under the Program for Children with Severe Disabilities to evaluate an application for a demonstration project and a training project.

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to children with severe disabilities, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and related service needs of children with severe disabilities served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to children with severe disabilities who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are quantifiable. (Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to

devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

Eligible Applicants: Any public or private, profit or nonprofit, organization or institution may apply for a grant under this program.

(Program Authority: 20 U.S.C. 1424)

SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR YOUTH WITH DISABILITIES PROGRAM

| Title and CFDA No. | Deadline for transmittal of applications | Deadline for intergovernmental review | Available funds | Estimated range of awards | Estimated size of awards | Estimated number of awards | Project period in months |
|---------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|---------------------------------------|-----------------|---------------------------|--------------------------|----------------------------|--------------------------|
| Model Demonstration Projects to Identify, Recruit, Train, and Place Youth with Disabilities Who Have Dropped Out of School (CFDA 84.158D). | 5-21-92 | 7-21-92 | \$840,000 | \$100,000-110,000 | \$105,000 | 8 | Up to 36. |
| Model Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination (CFDA 84.158K). | 5-21-92 | 7-21-92 | 928,000 | 120,000-140,000 | 130,000 | 7 | Up to 36. |
| Research Projects on the Transition of Special Populations to Integrated Post Secondary Environments (CFDA 84.158P). | 5-21-92 | 7-21-92 | 890,000 | 100,000-120,000 | 110,000 | 8 | Up to 36. |
| Institute to Evaluate and Provide Technical Assistance to States Implementing Cooperative Projects to Improve Transition Services (CFDA 84.158G). | 5-21-92 | 7-21-92 | 225,000 | 225,000 | 225,000 | 1 | Up to 60. |

Note: Applications submitted under 84.158D, 84.158K and 84.158G will be evaluated under the selection criteria for "Model" projects. Applications submitted under 84.158P will be evaluated under the selection criteria for "Research" projects.

Selection Criteria

The Secretary uses the following criteria in this section to evaluate applications for research and evaluation projects under the Secondary Education and Transitional Services for Youth with Disabilities Program. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project.

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) Budget and cost effectiveness. (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) Evaluation plan. (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) Adequacy of resources. (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Importance. (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project addresses national concerns in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(g) Impact. (10 points) The Secretary reviews each application for information that shows the probable impact of the proposed project in educating youth with disabilities, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) Technical soundness. (40 points) The Secretary reviews each application for information demonstrating the technical soundness of the research or evaluation plan, including—

(1) The design (10 points);

(2) The proposed sample (10 points);

(3) Instrumentation (10 points); and

(4) Data analysis procedures (10 points).

Eligible Applicants: Institutions of higher education, State educational agencies, local educational agencies and other public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 et seq.)).

(Authority: 20 U.S.C. 1425)

The Secretary uses the following criteria to evaluate applications for model projects. The maximum score for all of the criteria is 100 points.

(a) Plan of operation. (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities;

(D) The elderly.

(b) Quality of key personnel. (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) Budget and cost effectiveness. (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) Evaluation plan. (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and to the extent possible, are objective and produce data that are quantifiable.

(e) Adequacy of resources. (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Importance. (10 points) The Secretary reviews each application for information that shows—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in solving the problem.

(g) *Impact.* (10 points) The Secretary reviews each application for information that shows the probable impact of the proposed model in educating youth with disabilities, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Innovativeness.* (10 points)

(1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(i) *Technical soundness.* (25 points) The Secretary reviews each application for information demonstrating the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

Eligible Applicants: Institutions of higher education, State educational agencies, local educational agencies and other public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 et seq.)).

(Authority: 20 U.S.C. 1425)

Intergovernmental Review of Federal Programs

These programs are subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism

by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one state should contact, immediately upon receipt of this notice, the Single State Point of Contact for each State and follow the procedure established in those States under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the *Federal Register* on November 18, 1987, pages 44338-44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by the date indicated in this notice to the following address. The Secretary, E.O. 12372-CFDA# U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications. (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#), Washington, DC 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#), Room #3633, Regional Office Building #3, 7th and D Street, SW., Washington, DC 20202.

(b) An applicant must show one of the following proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered post mark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional material are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and Instructions.

Part II: Budget Information—Non-construction Programs (Standard Form 424A) and Instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-construction Programs (Standard Form 424B). Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013).

Certifications regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014) and instructions. (NOTE: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable)) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the combined certification form. However, the application form, the assurances, and the certification form must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT:

Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 4620-2644), Washington DC 20202. Telephone: (202) 732-4503 (voice) or (202) 732-1169 (TDD).

Dated: April 1, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Common Questions and Answers

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions. In general these questions and answers are applicable to all direct grant competitions covered by this application package.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the *Federal Register* and apply to all applications. Waivers for individual applications cannot be granted, regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applicants should not use foldouts, photographs, or other materials that are hard-to-duplicate.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, but it may not be worth the postage. A properly prepared application should meet the

specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate. What should I do?

A. We are happy to discuss the questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor does it guarantee the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. How long should an application be?

A. The Secretary strongly requests the applicant to limit the Application Narrative to no more than 30 pages, double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. It is helpful to include in the appendices such information as:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information relevant to the proposed project. Qualifications of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project,

including copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How can I be sure that my application is assigned to the correct competition?

A. Applicant should clearly indicate in Block 6a, 6b, and 7 of the face page of their application (Standard form 424) the CFDA number of the program priority (e.g., 84.023X) representing the competition in which the application should be considered. If this information is not provided, your application may inadvertently be assigned and reviewed under a different competition from the one you intended.

Q. Will my application be returned if I am not funded?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to applicants who are not successful.

Q. How should my application be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project should precede the application narrative.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual meeting, you may also wish to include a trip to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives a high score from the reviewer does that mean that I will receive funding?

A. No. It is often the case that the number of applications scored highly by or recommended by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during

panel and staff review and require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. If my application is successful can I assume I will get the estimated/

projected budget amounts in subsequent years?

A. No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subsequent years. Grantees having a multi-year project will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

Q. What is a cooperative agreement and how does it differ from a grant?

A. A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for a public purpose of support or stimulation as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

Q. Is the procedure for applying for a cooperative agreement different from the procedure for applying for a grant?

A. No. If the Department of Education determines that a given award should be made by cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

Q. How do I provide an assurance?

A. Simply state in writing that you are meeting prescribed requirement.

Q. Where can copies of the Federal Register, program regulations, and federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

**APPLICATION FOR
FEDERAL ASSISTANCE**

| | | | | | | | | | | | | | | | | | | | | | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-----|--------------|----|-----|----------|----|-----|----------|----|-----|----------|----|-----|-------------------|----|-----|----------|----|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction | | 2. DATE SUBMITTED | Applicant Identifier | | | | | | | | | | | | | | | | | | | | | |
| | | 3. DATE RECEIVED BY STATE | State Application Identifier | | | | | | | | | | | | | | | | | | | | | |
| | | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier | | | | | | | | | | | | | | | | | | | | | |
| 5. APPLICANT INFORMATION | | | | | | | | | | | | | | | | | | | | | | | | |
| Legal Name: | | Organizational Unit: | | | | | | | | | | | | | | | | | | | | | | |
| Address (give city, county, state, and zip code): | | Name and telephone number of the person to be contacted on matters involving this application (give area code): | | | | | | | | | | | | | | | | | | | | | | |
| 6. EMPLOYER IDENTIFICATION NUMBER (EIN): <div style="border: 1px solid black; width: 150px; height: 20px; margin: 5px 0;"></div> | | 7. TYPE OF APPLICANT: (enter appropriate letter in box) <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District </div> <div style="width: 45%;"> H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) _____ </div> </div> | | | | | | | | | | | | | | | | | | | | | | |
| 8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____ | | 9. NAME OF FEDERAL AGENCY: | | | | | | | | | | | | | | | | | | | | | | |
| 10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px 0;"></div> TITLE: | | 11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: | | | | | | | | | | | | | | | | | | | | | | |
| 12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| 13. PROPOSED PROJECT: Start Date Ending Date | | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant b. Project | | | | | | | | | | | | | | | | | | | | | | |
| 15. ESTIMATED FUNDING: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 10%; text-align: right;">.00</td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>c. State</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>g. TOTAL</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> </table> | | a. Federal | \$ | .00 | b. Applicant | \$ | .00 | c. State | \$ | .00 | d. Local | \$ | .00 | e. Other | \$ | .00 | f. Program Income | \$ | .00 | g. TOTAL | \$ | .00 | 16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW | |
| a. Federal | \$ | .00 | | | | | | | | | | | | | | | | | | | | | | |
| b. Applicant | \$ | .00 | | | | | | | | | | | | | | | | | | | | | | |
| c. State | \$ | .00 | | | | | | | | | | | | | | | | | | | | | | |
| d. Local | \$ | .00 | | | | | | | | | | | | | | | | | | | | | | |
| e. Other | \$ | .00 | | | | | | | | | | | | | | | | | | | | | | |
| f. Program Income | \$ | .00 | | | | | | | | | | | | | | | | | | | | | | |
| g. TOTAL | \$ | .00 | | | | | | | | | | | | | | | | | | | | | | |
| 17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? <input type="checkbox"/> Yes If "Yes," attach an explanation <input type="checkbox"/> No | | | | | | | | | | | | | | | | | | | | | | | | |
| 18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED | | | | | | | | | | | | | | | | | | | | | | | | |
| a. Typed Name of Authorized Representative | | b. Title | c. Telephone number | | | | | | | | | | | | | | | | | | | | | |
| d. Signature of Authorized Representative | | e. Date Signed | | | | | | | | | | | | | | | | | | | | | | |

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | |
|----------------------------------------|---------------------------------------------------|-----------------------------|-----------------|-----------------------|-----------------|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) |
| 1. Direct Charges | | \$ | \$ | \$ | \$ |
| 2. | | | | | |
| 3. Indirect Charges | | | | | |
| 4. | | | | | |
| 5. TOTALS | | \$ | \$ | \$ | \$ |

SECTION B — BUDGET CATEGORIES

| Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | |
|------------------------------------------|-------------------------------------|-----|-----|-----|-----------|
| | (1) | (2) | (3) | (4) | Total (5) |
| a. Personnel | \$ | \$ | \$ | \$ | \$ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | \$ | \$ | \$ | \$ | \$ |
| 7. Program Income | \$ | \$ | \$ | \$ | \$ |

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Standard Form 424A (4-86)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|------------------------------------|---------------|-----------|-------------------|------------|
| 8. | \$ | \$ | \$ | \$ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | \$ | \$ | \$ | \$ |

SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|------------------------------------|--------------------|-------------|-------------|-------------|-------------|
| 13. Federal | \$ | \$ | \$ | \$ | \$ |
| 14. Non-Federal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | \$ | \$ | \$ | \$ | \$ |

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---------------------------------|--------------------------------|------------|-----------|------------|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | \$ | \$ | \$ | \$ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16-19) | \$ | \$ | \$ | \$ |

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not* requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For *new* applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g) (continued)

For *continuing* grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental* grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Part III—Program Narrative**Instructions for Estimated Public Reporting Burden**

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 36 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S.

Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0028, Washington, D.C. 20503.

(Information collection approved under OMB control number 1820-0028. Expiration date: June, 1992.)

New Grants

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for

which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, and project outcomes of the proposed project should precede the application narrative.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Note.—The application narrative should not exceed 30 double-spaced typed pages (on one side only).

BILLING CODE 4000-01-M

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| | | |
|---------------------------------------------|--|----------------|
| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | | TITLE |
| APPLICANT ORGANIZATION | | DATE SUBMITTED |

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| | |
|-----------------------------------------------------|-------------------------------------|
| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| | |
|-----------------------------------------------------|-------------------------------------|
| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0346-0046

| | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance | 2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award | 3. Report Type: <input type="checkbox"/> a. Initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____ |
| 4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____ | | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____ |
| 6. Federal Department/Agency: _____ | | 7. Federal Program Name/Description: _____ CFDA Number, if applicable: _____ |
| 8. Federal Action Number, if known: _____ | 9. Award Amount, if known: \$ _____ | |
| 10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): _____ | | b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): _____ |
| (attach Continuation Sheet(s) SF-LLL-A, if necessary) | | |
| 11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned | 13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____ | |
| 12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____ | | |
| 14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: _____ _____ _____ | | |
| (attach Continuation Sheet(s) SF-LLL-A, if necessary) | | |
| 15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| 16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. | | Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____ |
| Federal Use Only | | Authorized for Local Reproduction Standard Form - LLL |

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

| Item | Amount | Item | Amount |
|-------------------------------|--------|-------------------------------|--------|
| 1. Federal Government | | 1. Federal Government | |
| 2. State Government | | 2. State Government | |
| 3. Local Government | | 3. Local Government | |
| 4. Foreign Government | | 4. Foreign Government | |
| 5. International Organization | | 5. International Organization | |
| 6. Federal Reserve System | | 6. Federal Reserve System | |
| 7. Other Governmental Entity | | 7. Other Governmental Entity | |
| 8. Total | | 8. Total | |

Final Report to Congress on the Federal Resettlement Program

Wednesday
April 8, 1992

Part V

Department of Health and Human Services

Administration for Children and Families

Planned Secondary Resettlement
Program; Notice of Availability of
Funding for Grants

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Availability of Funding for Grants To Assist Interested Refugees To Effect Planned Secondary Resettlements to Favorable Communities Under the Planned Secondary Resettlement (PSR) Program

AGENCY: Office of Refugee Resettlement, ACF, HHS.

ACTION: Notice of availability of funding for grants to assist interested refugees¹ to effect planned secondary resettlements to favorable communities under the Planned Secondary Resettlement (PSR) program.

SUMMARY: The Office of Refugee Resettlement (ORR) announces the availability of grants to public or private non-profit organizations or agencies for the purpose of providing assistance to eligible refugees in high welfare utilization areas who wish to relocate in a planned way to communities offering favorable employment and resettlement opportunities. Only families with children are eligible. Singles and childless couples are not eligible. In addition, to be eligible, the family must reside in an area where refugees have a high incidence of welfare utilization²

¹ In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, or those paroled as refugees under INA section 212(d)(5), eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 504 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100-202), and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100-461). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State.

² The applicant shall describe the proposed areas of recruitment and include in the application available documentation showing that refugees in these areas have a high incidence of welfare utilization.

and the head of household must be unemployed and/or receiving cash assistance. Also, the head of household must not have received education in the U.S. beyond a U.S. high school diploma or equivalent. (Exception will be made for those heads of household who have received post-secondary vocational and/or technical training as part of their approved employability plan prescribed by ORR regulations.)

Services allowable under the Planned Secondary Resettlement (PSR) program include pre-resettlement activities to prepare prospective receiving communities, and to identify and prepare interested refugees for participation in PSR; and resettlement services to facilitate prompt employment and a positive resettlement in the new location. Applications will be accepted for new grants pursuant to section 412(c) of the Immigration and Nationality Act as amended by section 412 of the Refugee Act of 1980, (Pub. L. 96-212), 8 U.S.C. 1522(c).

Awards, on a competitive basis, will be for a one-year budget period, although project periods may extend up to three years. Applications for continuation grants to extend activities funded under these awards beyond the one-year budget period but within the maximum 3-year project period will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, timely and successful completion of the project, and ORR's determination that this would be in the best interest of the Government. This announcement contains forms and instructions for submitting an application.

Availability of Funds. Approximately 8 grants for a total of \$1.2 million are expected to be awarded annually, beginning in FY 1992.

This is a standing announcement. ORR will accept new applications under this announcement in FY 1992, and new and noncompeting continuation applications in subsequent years. ORR will make awards based upon availability of funds, the best interests of the Government, and the review criteria as presented in section X of this announcement. This announcement will be updated only if information contained herein changes.

Closing Date: The closing dates for submission of applications are February 15, June 15 and October 15 of each year beginning in fiscal year 1992.

FOR FURTHER INFORMATION CONTACT: Nguyen T. Kimchi, Office of Refugee

Resettlement, 370 L'Enfant Promenade SW., Washington, DC. 20447, telephone: (202) 401-4556.

Authorization

Authority for this activity is contained in section 412(c) of the Immigration and Nationality Act as amended by section 412 of the Refugee Act of 1980 (Pub. L. 96-212).

I. Background

The Office of Refugee Resettlement has been supporting the Planned Secondary Resettlement Program since fiscal year 1985. The program has successfully relocated more than 500 refugee families from high welfare areas to self-sufficient communities in five States. This document announces the PSR program beginning in FY 1992. It eliminates the two-phase (planning and resettlement) requirement of the previous announcement and allows for multi-year grants. The basic design for the PSR program remains unchanged although several modifications are introduced to make the program more efficient and effective.

II. Purpose and Scope

The purpose of this announcement is to provide an opportunity for disadvantaged refugee families residing in high welfare utilization/high unemployment areas who have not been able to find employment to relocate to areas in the U.S. that offer favorable prospects for employment and positive resettlement. Resettlement supported under PSR grants must be keyed to assisting refugees to relocate to communities which provide significantly better opportunities for employment and family self-sufficiency than exist in the refugees' current community. Central to a planned secondary resettlement is the pre-relocation identification of employment opportunities that will enhance the economic self-sufficiency of participating refugees. No grants will be awarded to support resettlements in high welfare utilization areas or in areas where the job market for the refugees targeted by the proposed PSR project would not support self-sufficiency for families.

Resettlements to be supported under PSR grants must proceed from a clear expression of interest and readiness on the part of the refugee families to participate in a resettlement.

III. Eligible Applicants

State agencies responsible for the administration of State Refugee programs, public and private non-profit

organizations that have had demonstrated experience in the provision of services to refugees, such as national or local refugee mutual assistance associations (MAAs) and national or local voluntary resettlement agencies, are eligible to apply for funds under the PSR program. A mutual assistance association is defined as a legally incorporated nonprofit organization which has a Board of Directors (or governing board) composed of 51% refugees or former refugees of both sexes.

Any combination or consortium of qualified organizations may join together to make application so long as one organization is clearly identified as the responsible grantee.

Although most previous grants were awarded to organizations located in the receiving sites, awards may be made to any qualified organizations meeting the above described eligibility criteria. Qualified organizations not located in a receiving site which wish to initiate a PSR must make provision for resettlement services at the receiving sites. In addition, applicants must be organizations or agencies which already have sources of income for the provision of services to refugees. That is, a grantee cannot have an award under this program as its sole source of program and administrative income. Minimally, the applicant must be able to show sources of income at least equivalent to one third of the amount being applied for under this announcement from other sources. The money from other sources shown does not have to be provided or raised for the purpose of providing PSR services to refugees. This funding is required to demonstrate the capacity and stability of the agency. Evidence of funding, such as grant award letters or other letters of commitment must be provided. This requirement may be waived for applicants who propose to resettle large numbers of refugees—30 or more families—per 12-month budget at a per-family unit cost approved by the Director of ORR in considering the application.

IV. Planning grants

ORR will consider awarding one-time only planning grants in amounts up to \$10,000 to help fund project planning and development costs. Such grants would only be considered for applicants who have not previously received a PSR grant. New applicants who wish to be considered must submit a proposal which demonstrates the feasibility of the project and the need to further assess conditions necessary for implementing a PSR project. Applications for planning

grants will be evaluated according to the following criteria:

A. Feasibility of the Project

Applicants must address this criterion by providing the following:

- Description of the proposed sending sites and justification of their selection;
- Description of the proposed resettlement site, its economic conditions and availability of employers and services;
- Description of the project including the target population, the recruitment strategy, the employment resettlement plan, and discussion of potential earnings and cost of living factors.

B. Reasonableness of the Planning Activities

Planning activities may include the following:

- Assessment of the capacity of the receiving community to provide tangible opportunities for employment, appropriate social services, adequate and affordable housing, health care, favorable educational facilities for children, and a receptive community climate for refugees.
- Introductory visits by representatives of the receiving site to prospective sending site(s) to make presentations to interested refugees, refugee community leaders and other interested parties, on available opportunities in the prospective receiving community.
- On-site visits by prospective PSR refugee and/or refugee community representatives to the proposed receiving site for a first-hand assessment of the community and its resources.
- Identification of eligible refugees in the sending site(s) who wish to relocate to the proposed receiving site(s).
- Preparation of a PSR grant application if the planning phase indicates feasibility of a resettlement project.
- Other reasonable planning-related activities in support of project goals.

The project and budget periods for planning grants under this announcement normally shall not exceed 3 months from the date of award.

C. Cost-Effectiveness of the Proposed Budget

Applicants must provide a line item budget and a narrative justification for the planning activity.

D. Capacity of the Agency

Applications must provide adequate evidence that the applicant agency has

the capability to provide program and financial management for a grant project and that, should the planning be awarded, has the requisite capacity to successfully implement a Planned Secondary Resettlement project under this announcement.

The application for a planning grant will be reviewed based on the four elements listed above.

V. Resettlement Grants

It is expected that most planned secondary resettlement grants would be made to agencies located in "receiving" sites in communities where most, if not all, refugees are self-sufficient. In general, receiving sites should have the following conditions:

- The existence of a stable refugee community of the same ethnicity as the refugees proposed for relocation;
- The availability of full-time employment at skill levels appropriate to PSR refugees, with health benefits or accessible and affordable health services within the community;
- The capacity to provide job placement, English as a Second Language (ESL), and other appropriate social services; and
- A high employment rate and concomitantly, a low welfare utilization level among the existing refugee population.

The Director will also make awards under this program to national or local organizations which can demonstrate an existing agreement with recipient sites to accept and help to resettle refugee families recruited from areas of high welfare utilization. Under such a grant the grantee could propose to provide assistance to receiving sites where refugee communities have agreed to receive and help PSR refugees resettle but where there not not agencies which wish to assume project management responsibility for the resettlement of families moving under the PSR program. In such case, the sponsoring agency grantee would recruit or assist with recruitment, and would provide resettlement assistance either (1) through an agreement with a local agency, (2) directly to the families moving, or (3) some combination of direct assistance to families and assistance through agreement with a local agency. Resettlement assistance means the transportation and moving costs, the initial expenses in the new site—specifically, short-term health coverage, resettlement allowances, and living expenses (including security deposits and utilities) as described below. It is expected that the number of families resettled at each site would be

relatively small and that the local agency would not need additional staff to serve PSR refugees. The sponsoring grantee, not the agency in the receiving site, would be held responsible for the successful resettlement of refugees resettled under grants of this type.

It is anticipated that the total number of refugees to be resettled under any one grant will not be less than 15 families equalling about 60 persons per budget cycle. Large projects resulting in low per capita resettlement costs are strongly encouraged. Per capita costs will be a primary factor in determining a project's acceptability for funding under this announcement.

The Director of ORR particularly seeks applications showing project cost-effectiveness through the resettlement of large numbers of refugees—30 or more families—per budget cycle. This may be accomplished in a single site in large metropolitan areas or in multiple sites in smaller communities so long as the applicant is able to demonstrate a per capita cost substantially lower than the national average.

VI. Allowable Grant Activities

A. Employment services, including the development of an individual employability plan, world of work and job orientation, job development, counseling, placement, and follow-up.

B. Job Training: Short-term skills training and on-the-job training geared to the local economy and jobs available in the community.

C. Language services: Language training, limited to vocational language skills needed to obtain and maintain employment. Joint planning and implementation of English as a Second Language (ESL) with specific employers and paid for by the employers is preferred.

Projects offering language and job training services must ensure that these services do not interfere with the refugees' employment and must, when necessary, demonstrate provisions—other than access to public assistance—for supporting the family while the refugee is in training.

D. Support Services: Short-term support services (such as day care, transportation, etc.) limited to activities that are job-related and will lead specifically to the ability of refugees to obtain and retain employment. This includes counseling and related family services which enable families to attain or enhance self-sufficiency through multiple wage earner strategies. Applicants are encouraged to coordinate with other service providers for the provision of support services.

E. Short-term emergency health coverage: This service is limited to the first six months of resettlement and may be purchased or provided by the grantee through a reimbursement program for medical services.

F. Resettlement Allowance: To enable participating refugees to meet transportation and basic food and shelter expenses during the initial resettlement period, a resettlement allowance will be an allowable cost item under PSR grants. Such allowances will be restricted to the following costs:

- Reasonable transportation and moving costs.
- Living expenses for a period not to exceed 90 days, including food, shelter, utilities and local transportation costs. The total cost for living expenses shall not exceed the amount equal to 50 percent of State Need Standard amounts for 90 days as determined by State welfare agencies. The total cost for food shall not exceed the amount equal to 50 percent of Maximum Food Stamps Allotments for 90 days.

• A small revolving fund may be established for security deposits for housing and utilities. This amount shall not exceed 50 percent of the total amount necessary for security deposits for the entire project. Provisions for reimbursement of the deposits must be established to ensure the recovery of funds. The revolving fund and any earned interest must be returned to the government at the termination of the project.

Resettlement allowances may be paid by the grantee directly to the qualifying head of household, or to an agency or organization designated to coordinate or supervise the resettlement. The resettlement allowance must be applied in full to expense items noted above.

Efforts to obtain additional funds for this purpose from private sources are strongly encouraged. Cooperation with local employers who provide full or partial relocation costs, either to enhance the program or to reduce costs, would be favorably considered by ORR.

VII. Eligible Refugee Populations

The main purpose of the Planned Secondary Resettlement Program is to help refugees achieve economic self-sufficiency. ORR's experience shows that singles and childless refugee couples are more likely to become self-sufficient earlier than refugee families with children. To close this gap, this program focuses on the latter population in order to improve the prospects for attaining program goals. Only families with children are eligible. Singles and childless couples are not eligible. This is a change from the prior standing

announcement. In addition, to be eligible, the head of household must be unemployed and/or receiving cash assistance. The head of household must not have received education in the U.S. beyond a U.S. high school diploma or equivalent. (Exception will be made for those refugees receiving post-secondary vocational or technical training as part of their approved employability plan prescribed by ORR regulations.) Also the family must reside in an area having refugee high welfare utilization as documented in the application.

VIII. Eligible Sending Sites

Generally, eligible sending sites will be limited to communities where there is high welfare utilization and unemployment among the refugee population (including time-expired refugees). Sites proposed will be subject to approval as part of the approval of the application.

IX. Characteristics of Receiving Sites

It is expected that receiving sites proposed for PSR shall have demonstrably favorable conditions for refugee resettlement. In general, the following conditions are required to be present in proposed receiving sites:

- The existence of a stable refugee community of the same ethnicity as the refugees proposed for relocation;
- The availability of full-time employment at skill levels appropriate to PSR refugees, with health benefits or accessible and affordable health services within the community;
- The capacity to provide job placement, ESL and other appropriate social services;
- A high employment rate among the existing refugee population;
- A receptive community environment for newly arriving refugees.

X. Criteria for Evaluation

The application must demonstrate the extent to which the proposed project meets certain criteria listed below, and describe proposed activities taking into consideration the project period and the estimated cost per each 12-month budget period. The application will be evaluated by a panel of experts based on the criteria below. However, scoring by the panel against these criteria, while weighing heavily in funding decisions, will not be solely determinant. Also taken into consideration are recommendations of ORR and ACF staff, recommendations by State officials where applicable, and past program performance of applicants who received PSR grants from ORR. Final funding decisions will be made by the

Director, ORR, and the Assistant Secretary, ACF.

A. Recruitment Plan: 25 Points

The feasibility of the recruitment strategy will be evaluated through the recruitment plan and documentation of interest on the part of the target population. Applicants must submit the following:

- Detailed recruitment plan including methodology and timelines; plan for ongoing contact with refugees in the sending site(s); and samples of the proposed community presentation in conveying a comprehensive view of the economic and social conditions in the receiving site(s), including a realistic view of available resources and opportunities;

- Documentation of interest on the part of eligible refugees and/or agreement with community leaders or local service providers who have access to the target population.

B. Receiving Site(s) Criteria: 10 points

Applicants must describe specifically the evidence available to support a judgment that the proposed receiving site(s) is a desirable community for refugee resettlement. Specific conditions include but are not limited to:

- Existence of a stable refugee community of the same ethnicity as the refugees proposed for relocation;
- Evidence of high employment rate and, concomitantly, a low welfare utilization rate, among the existing refugee population;
- Evidence that the receiving site offers the conditions necessary to the success of a PSR project, such as immediate or imminent prospects for full employment commensurate with the cost of living for families of the size anticipated and local employers interested in hiring relocated refugees;
- Evidence of the availability of adequate and affordable health services for PSR refugees, preferably through employer-provided health insurance benefits;
- Evidence of the availability of affordable housing in areas convenient to employment;
- Capacity to provide job placement, ESL, and other social services on a timely and culturally appropriate basis.

C. Implementation Plan Criteria: 25 points

Applicants not located in the receiving site must describe provision for resettlement services at the receiving sites. Regardless of the arrangement, it is expected that such applicant must describe project management and control.

All applicants must describe the proposed implementation plan which must include the following:

- A detailed plan for the organization, delivery and coordination of resettlement services including the specific social and employment services to be provided;
- If the service plan includes referrals to other agencies, the description of services available, the identities of proposed service providers and the monitoring plan;
- Reasonableness of resettlement services, including plan for use of resettlement allowances and timetable for relocation of participating families.

D. Community consultation and coordination: 10 points

- The extent to which the applicant has coordinated or plans to coordinate proposed activities with existing mutual assistance associations or other refugee representatives in both sending and receiving sites;
- Description of consultation process with the appropriate State Refugee Coordinator(s) for the receiving site(s) if the State agency is not the applicant.

E. Qualifications of Participating Organizations: 15 points

Extent to which proposed organizations have demonstrated track records as providers of services to refugees:

- Evidence of experience as a refugee service provider; documentation of additional sources of income of at least one-third of the amount applied under PSR for projects resettling fewer than 30 families per year.
- The extent to which the applicant has an established, positive relationship with the resident refugee community;
- If the applicant is a refugee mutual assistance association (MAA), description of the board membership and conformity to ORR's definition of a MAA and ORR's requirement for board membership composed of both sexes;
- Adequacy of staffing patterns and qualifications. Applicants must submit documentation of staff qualifications, either through actual resumes of proposed staff or position descriptions. Applicants proposing to resettle more than one ethnic group must demonstrate staff capacity (linguistic and cultural) to provide appropriate services.

F. Budget and Management Criteria: 15 points

The budget, as estimated, is necessary, reasonable, and cost-effective; and the management assures effective program control.

- Adequacy and clarity of the narrative justification and detailed calculation to support each line item;
- Evidence of the applicant's capacity for fiscal and project management;
- Extent to which the project utilizes other available resources to reduce program expenditures;
- Project cost effectiveness as reflected by low individual and family per capita costs;
- Adequacy of the plan for project management of each PSR site, including start-up time, ongoing timelines, a component/project organization chart, and a plan for the disbursement of resettlement allowances.

XI. Reporting and Records Requirements

A. Program Reports

An original and one copy of the program reports are due quarterly, based upon the Federal Fiscal Year: The report for the period October 1 through December 31 is due January 31; January 1 through March 31, due April 30; April 1 through June 30, due July 31; July 1 through September 30, due October 31. Report format and instructions are issued with grant awards as standard terms and conditions.

B. Financial Reports

An original and two copies of the Standard Financial Status Report (SF 269) are due quarterly based on the Federal Fiscal Year as described above.

The final report is due 90 days following the end of the project period.

C. Records

Grantees must provide for the maintenance of such operational records as are necessary for Federal monitoring of the grantee's project.

XII. Regulations

HHS grantees are subject to Departmental regulations, where applicable as follows:

- 45 CFR Part 6—Inventions and Patents (General).
- 45 CFR Part 8—Inventions Resulting from Research Grants.
- 45 CFR Part 16—Departmental Appeals Board Procedures.
- 45 CFR Part 30—Claims Collection.
- 45 CFR Part 46—Protection of Human Subjects.
- 45 CFR Part 74—Administration of Grants (non-governmental).
- 45 CFR Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates).
- Sections 74.62(a) Non-Federal Audits.
- 74.173 Hospitals.
- 74.274(b) Other Nonprofit Organizations.
- 74.304 Final Decisions in Disputes.

- 74.710 Real Property, Equipment and Supplies.
- 74.715 General Program Income.
- 45 CFR Part 75—Informal Grant Appeals Procedures.
- 45 CFR Part 76—Debarment and Suspension From Eligibility for Financial Assistance.
- 45 CFR Part 80—Nondiscrimination Under Programs receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964.
- 45 CFR Part 81—Practice and Procedures for Hearings Under Part 80 of this Title.
- 45 CFR Part 83—Nondiscrimination on the Basis of Sex in the Admission of Individuals to Training Programs.
- 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs.
- 45 CFR Part 91—Nondiscrimination on the Basis of Age in Program or Activities Receiving Federal Financial Assistance.
- 45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, as applicable.
- 45 CFR Part 93—New Restrictions on Lobbying.
- 45 CFR Part 95—Subpart E, General Administration Grant Programs (Public Assistance and Medical Assistance) Cost Allocation Plan.
- 45 CFR Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities.
- 45 CFR Part 400—Refugee Resettlement Program.
- 45 CFR Part 401—Cuban/Haitian Entrant Program.

The Recipient shall comply with the requirements, as applicable, of OMB Circulars No. A-102 and A-110 regarding administrative procedures; Treasury Circular No. 1075 and 32 CFR Part 205 on financial procedures; OMB Circulars No. A-21, A-87, and A-122 on cost principles; and OMB Circulars No. A-128 and A-133 on audit requirements.

Grants are subject to indirect cost reimbursement in accordance with Chapter 6-150 of the HHS Grants Administration Manual, HHS Transmittal 87.01 (6/12/87).

Intergovernmental Review

This program is covered by Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100 "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oregon, Virginia, Pennsylvania, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact

(SPOCs). Applicants from these eleven jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which then tend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of Single Points of Contact for each State and Territory is included as Appendix B of this announcement.

XIII. Application Procedures

A. Deadlines

Applications shall be considered as meeting an announced deadline if they are either:

1. Received on or before the deadline date at a place specified in the program announcement, or
2. Sent on or before the deadline date and received by the granting agency in time for the independent review under chapter 1-62. (Applicants must be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications

Applications which do not meet the criteria in paragraph A of this section

are considered late applications. Any late applicants will be notified that their applications will not be considered in the current competition.

C. Extension of Deadlines

ACF/ORR may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

Once an application has been submitted, it is considered as final and no additional materials will be accepted by ORR. An application with an original signature and two copies are required. The original and two copies must be sent to the address below. Applications, if mailed, should be addressed to: Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

Applications, if hand delivered, should be taken to Administration for Children and Families, Division of Discretionary Grants, 901 D Street SW., 6th Floor, Washington, DC 20447.

XIV. Application Submission

Application for awards under this announcement must be submitted on Standard Form (SF) 424 provided for that purpose. The forms may be reproduced for use in submitting applications. Applications, including all required attachments, should be sequentially numbered. Copies should be identical to the original application and attachments in the event it becomes necessary to duplicate them for review purposes.

The original application must be submitted on 8½×11 inch white paper. The applications should be two-holed punched at the top center and fastened separately with compressor slide paper fastener, such as an ACCO clip, or a binder clip.

The submission of bound applications or applications enclosed in binders, is specifically discouraged. Applications should not include organizational brochures or other promotional materials, slides, films, clips, etc.

Prior to mailing the submission, applicants should specifically check to make sure that:

- a. The SF-424 is signed.
- b. All the sections of the SF-424 and the SF-424A are properly and completely filled out.
- c. The SF-424B and all required assurances are signed.

d. The project narrative and required documentation are included.

e. Two copies identical to the original are included.

f. The package is assembled in accordance with the instructions set forth in this announcement.

g. A mailing label is included.

XV. Application Acknowledgement and Screening

All applicants will receive an acknowledgment card with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent

communications concerning the application. If an acknowledgment card is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401-9230.

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the submission requirements of this announcement. Only applications meeting those requirements will be reviewed and evaluated competitively. Others will be returned to the applicant with a notation that they were incomplete.

XVI. Post-Award Information and Reporting Requirements

The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, and the terms and conditions of the award.

(Catalog of Federal Domestic Assistance number 93.038)

Dated: March 26, 1992.

Chris Gersten,

Director, Office of Refugee Resettlement.

BILLING CODE 4130-01-M

APPENDIX A
APPLICATION FOR
FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--|-----|--------------|----|--|-----|----------|----|--|-----|----------|----|--|-----|----------|----|--|-----|-------------------|----|--|-----|----------|----|--|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction | | 2. DATE SUBMITTED | Applicant Identifier | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. DATE RECEIVED BY STATE | | State Application Identifier | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. DATE RECEIVED BY FEDERAL AGENCY | | Federal Identifier | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. APPLICANT INFORMATION | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Legal Name: | | Organizational Unit: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Address (give city, county, state, and zip code): | | Name and telephone number of the person to be contacted on matters involving this application (give area code): | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. EMPLOYER IDENTIFICATION NUMBER (EIN): <div style="border: 1px solid black; width: 150px; height: 20px; margin: 5px 0;"></div> | | 7. TYPE OF APPLICANT: (enter appropriate letter in box) <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District </div> <div style="width: 45%;"> H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____ </div> </div> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____ | | 9. NAME OF FEDERAL AGENCY: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px 0;"></div> TITLE: | | 11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 13. PROPOSED PROJECT: Start Date Ending Date | | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant b. Project | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 15. ESTIMATED FUNDING: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 10%;"></td> <td style="width: 10%;">.00</td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>c. State</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>g. TOTAL</td> <td>\$</td> <td></td> <td>.00</td> </tr> </table> | | a. Federal | \$ | | .00 | b. Applicant | \$ | | .00 | c. State | \$ | | .00 | d. Local | \$ | | .00 | e. Other | \$ | | .00 | f. Program Income | \$ | | .00 | g. TOTAL | \$ | | .00 | 16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW | |
| a. Federal | \$ | | .00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| b. Applicant | \$ | | .00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| c. State | \$ | | .00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| d. Local | \$ | | .00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| e. Other | \$ | | .00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| f. Program Income | \$ | | .00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| g. TOTAL | \$ | | .00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? <input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| a. Typed Name of Authorized Representative | | b. Title | c. Telephone number | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| d. Signature of Authorized Representative | | e. Date Signed | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4130-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

- "New" means a new assistance award.
- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

| SECTION A — BUDGET SUMMARY | | | | | | |
|------------------------------------------|---------------------------------------------------|-----------------------------|-----------------|-----------------------|-----------------|-----------|
| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | Total (g) |
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | |
| 1. | | \$ | \$ | \$ | \$ | \$ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | \$ | \$ | \$ | \$ | \$ |
| SECTION B — BUDGET CATEGORIES | | | | | | |
| Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | | Total (5) |
| | (1) | (2) | (3) | (4) | (5) | |
| a. Personnel | \$ | \$ | \$ | \$ | \$ | \$ |
| b. Fringe Benefits | | | | | | |
| c. Travel | | | | | | |
| d. Equipment | | | | | | |
| e. Supplies | | | | | | |
| f. Contractual | | | | | | |
| g. Construction | | | | | | |
| h. Other | | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | | |
| j. Indirect Charges | | | | | | |
| k. TOTALS (sum of 6i and 6j) | \$ | \$ | \$ | \$ | \$ | \$ |
| 7. Program Income | \$ | \$ | \$ | \$ | \$ | \$ |

Standard Form 424A (4-86)

SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Source | (e) TOTALS |
|------------------------------------|---------------|-----------|------------------|------------|
| 8. | \$ | \$ | \$ | \$ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | \$ | \$ | \$ | \$ |

SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|------------------------------------|--------------------|-------------|-------------|-------------|-------------|
| 13. Federal | \$ | \$ | \$ | \$ | \$ |
| 14. Non-Federal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | \$ | \$ | \$ | \$ | \$ |

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FISCAL PERIODS (Years) | | | |
|---------------------------------|-------------------------------|------------|-----------|------------|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | \$ | \$ | \$ | \$ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16-19) | \$ | \$ | \$ | \$ |

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| | |
|---------------------|-----------------------|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks | |

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Instructions for the SF-424A**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1-4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first pages should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds

needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6i in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e)

should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19—Enter in Column (a) the same grant programs titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section needed not be completed for revisions (amendments, changes or supplements) to funds for the current year or existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in

accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR part 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C.

276a to 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (Pub. L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with Pub. L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Appendix B

STATE SINGLE POINTS OF CONTACT

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 284-8905.

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280-1315.

Arkansas

Mr. Joseph Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866-2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727-9111.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone: (904) 488-8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 658-3855.

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—room 406, Honolulu, Hawaii 96813, Telephone (808) 548-5893, FAX (808) 548-8172.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610.

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725.

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111.

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone: (601) 960-4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640, FAX (505) 827-3006.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43260-0411, Telephone (614) 466-0698.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce,

Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 643-9770.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2658.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 1676.

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778.

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538-1535.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326.

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington, 98504-4151, Telephone (206) 753-4978.

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010.

Wisconsin

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53207, Telephone (608) 266-1741.

Please direct correspondences and questions to: William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin

Department of Administration, (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574.

TERRITORIES

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patricia Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750.

For OMB Purposes Only: File originated: 9-2-88 "Contacts".

Appendix C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the

offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Appendix D—U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR part 76, subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction.

Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)

Check ☐ if there are workplaces on file that are not identified here.

Sections 76.630 (c) and (d)(2) and 76.635 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central

receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, room 517-D, 200 Independence Avenue, SW., Washington, DC 20201.

Appendix E—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer of employee of any agency, a Member of Congress, an officer of employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to

Report Lobbying," in accordance with its instructions

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4130-01-M

APPENDIX F

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| | | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance | | 2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award | | 3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____ | |
| 4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____ | | | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____ | | |
| 6. Federal Department/Agency: | | | 7. Federal Program Name/Description: CFDA Number, if applicable: _____ | | |
| 8. Federal Action Number, if known: | | | 9. Award Amount, if known: \$ _____ | | |
| 10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): | | | b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): | | |
| (attach Continuation Sheet(s) SF-LLL-A, if necessary) | | | | | |
| 11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned | | | 13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____ | | |
| 12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____ | | | | | |
| 14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: <div style="height: 100px;"></div> | | | | | |
| (attach Continuation Sheet(s) SF-LLL-A, if necessary) | | | | | |
| 15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | |
| 16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. | | | Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____ | | |
| Federal Use Only: | | | Authorized for Local Reproduction Standard Form - LLL | | |

**Instructions for Completion of SF-LLL,
Disclosure of Lobbying Activities**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier.

Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the

reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 92-7981 Filed 4-7-92; 8:45 am]

BILLING CODE 4130-01-M

federal register

**Wednesday
April 8, 1992**

Part VI

Department of the Interior

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico; Oil and Gas Lease Sale 139; Notices

check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. For identification purposes, the company name (abbreviations acceptable) and company qualification number should also appear on the check or draft together with bid block identification (abbreviations acceptable). No bid for less than all of the unleased portions of a block or bidding unit, as referenced in paragraph 12, will be considered. Bidders are advised to use the description "All the Unleased Federal Portions" for those blocks having only aliquot or irregular portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file in the Gulf of Mexico regional office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.3333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding, Yearly Rental, and Royalty Systems. The following bidding, yearly rental, and royalty systems apply to this sale:

(a) Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of \$25 or more per acre or fraction thereof.

(b) Yearly Rental. All leases awarded will provide for a yearly rental payment of \$3 per acre or fraction thereof.

(c) Royalty Systems. All leases will provide for a minimum royalty of \$3 per acre or fraction thereof. The following royalty systems will be used:

(1) Leases with a 12 1/2-Percent Royalty. This royalty rate applies to blocks in water depths of 400 meters or greater as shown on map 2 (see paragraph 12). Leases issued on the blocks and bidding units offered in this area will have a fixed royalty rate of 12 1/2 percent.

(2) Leases with a 16 2/3-Percent Royalty. This royalty rate applies to blocks in water depths of less than 400 meters (see map 2). Leases issued on the blocks and bidding units offered in this area will have a fixed royalty rate of 16 2/3 percent.

2

4310-WR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Outer Continental Shelf
Central Gulf of Mexico
Oil and Gas Lease Sale 139

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356, (1988)), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m., Central Standard Time (C.S.T.)) until the Bid Submission Deadline at 10 a.m. Tuesday, May 12, 1992. Hereinafter, all times cited in this Notice refer to C.S.T. unless otherwise stated. Bids will not be accepted the day of Bid Opening, Wednesday, May 13, 1992. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD before 10 a.m., Tuesday, May 12, 1992. Bid Opening Time will be 9 a.m., Wednesday, May 13, 1992, at the Hilton Towers Hotel, 2 Poydras Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which will apply to this sale will be published in the Federal Register in April 1992, replacing the existing list which appeared in the issue of October 30, 1991.

3. Method of Bidding. A separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 139, (map number, map name, and block number(s)), not to be opened until 9 a.m., Wednesday, May 13, 1992," must be submitted for each block or prescribed bidding unit bid upon. The company name and qualification number should also appear on the envelope. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 139, NG 16-1, Atwater Valley, Block 701, not to be opened until 9 a.m., Wednesday, May 13, 1992, Overthrust Inc., No. 1093." For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified

5. **Equal Opportunity.** Each bidder must qualify for the sale by submitting prior to the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See paragraph 14(e).

6. **Bid Opening.** Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. **Deposit of Payment.** Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. **Withdrawal of Blocks.** The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. **Acceptance, Rejection, or Return of Bids.** The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

- (a) the bidder has complied with all requirements of this Notice and applicable regulations;
- (b) the bid is the highest valid bid; and
- (c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of \$25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. **Successful Bidders.** Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued, by

electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

11. **Leasing Maps and Official Protraction Diagrams.** Blocks or bidding units offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) Outer Continental Shelf (OCS) Leasing Maps, Louisiana Nos. 1 through 12. This set of 29 maps sells for \$32.

(b) Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for \$2.00 each.

| | | |
|----------|--------------------|------------------------------|
| NH 15-12 | Ewing Bank | (revised December 2, 1976). |
| NH 16-4 | Mobile | (revised November 8, 1988). |
| NH 16-7 | Viosca Knoll | (revised December 2, 1976). |
| NH 16-10 | Mississippi Canyon | (revised December 2, 1976). |
| NG 15-3 | Green Canyon | (revised December 2, 1976). |
| NG 15-6 | Walker Ridge | (revised December 2, 1976). |
| NG 15-9 | (No Name) | (revised April 27, 1989). |
| NG 16-1 | Atwater Valley | (revised November 10, 1983). |
| NG 16-4 | Lund | (revised August 22, 1986). |
| NG 16-7 | (No Name) | (revised April 27, 1989). |

(c) A complete set of all the above OCS Leasing Maps and Official Protraction Diagrams is available on microfiche for \$5.00 per set.

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. In these cases, the following supplemental documents to this Notice are available from the Gulf of Mexico regional office (see paragraph 14(a)).

- (1) Central Gulf of Mexico Lease Sale 139 - Final. Unleased Split Blocks.
- (2) Central Gulf of Mexico Lease Sale 139 - Final. Unleased Acreage of Blocks with Aliquots or Irregular Acreage Under Lease.

March 17, 1992

Central Gulf of Mexico Leasing Update List

The following blocks have become available for leasing since the proposed notice of sale was published. This list is being furnished for your convenience. If you have any questions regarding this memorandum, please contact Ms. Pat Bryars at 504-736-2763.

| West Cameron, West Addition | Vermilion | South Timber |
|------------------------------|---------------------------|------------------------------|
| 311 | 54 | 167 |
| West Cameron, South Addition | Vermilion, South Addition | South Timber, South Addition |
| 487 | 258 | 246 |
| 597 | 326 | |
| East Cameron | South Marsh Island | Grand Isle |
| 65 | 50 | 72 |
| 71 | | |
| 121 | | |
| 122 | | |
| | Ship Shoal | Mobile |
| | 185 | 950 |
| | 188 | 951 |
| | | 6 |

(b) References to Maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico regional office:

Map 1 entitled "Central Gulf of Mexico Lease Sale 139 - Final. Stipulations, Lease Terms, and Warning Areas."

Map 2 entitled "Central Gulf of Mexico Lease Sale 139 - Final. Bidding Systems and Bidding Units," refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Central Gulf of Mexico Lease Sale 139 - Final. Detailed Maps of Biologically Sensitive Areas," pertains to areas referenced in Stipulation No. 2.

(c) In several instances, two or more blocks have been joined together into bidding units totaling up to 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their total acreages appears on Map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(e), (b), and (c), except for those leased blocks described on pages 7 through 17.

(e) The proposed Notice for this sale, which was approved in January 1992, listed all Federal blocks under lease at that time. Subsequent changes in the lease status of certain of those blocks have made them available for leasing at this time. These newly available blocks are listed on page 6 of this Notice.

March 17, 1992

CENTRAL GULF OF MEXICO LEASED LANDS

(1) Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

| Sabine Pass | West Cameron, West Addition | West Cameron, South Addition | East Cameron | East Cameron, S. Addition | Vermilion |
|-------------|-----------------------------|------------------------------|--------------|---------------------------|-----------|
| 62 | 145 | 215 | 510 | 185 | 324 |
| 63 | 146 | 216 | 512 | 187 | 325 |
| 64 | 148 | 217 | 513 | 189 | 326 |
| 65 | 149 | 218 | 515 | 190 | 327 |
| 66 | 150 | 219 | 517 | 192 | 328 |
| 67 | 151 | 220 | 518 | 193 | 329 |
| 68 | 152 | 221 | 521 | 194 | 330 |
| 69 | 153 | 222 | 522 | 195 | 331 |
| 70 | 154 | 223 | 523 | 196 | 332 |
| 71 | 155 | 224 | 524 | 197 | 333 |
| 72 | 156 | 225 | 525 | 198 | 334 |
| 73 | 157 | 226 | 526 | 199 | 335 |
| 74 | 158 | 227 | 527 | 200 | 336 |
| 75 | 159 | 228 | 528 | 201 | 337 |
| 76 | 160 | 229 | 529 | 202 | 338 |
| 77 | 161 | 230 | 530 | 203 | 339 |
| 78 | 162 | 231 | 531 | 204 | 340 |
| 79 | 163 | 232 | 532 | 205 | 341 |
| 80 | 164 | 233 | 533 | 206 | 342 |
| 81 | 165 | 234 | 534 | 207 | 343 |
| 82 | 166 | 235 | 535 | 208 | 344 |
| 83 | 167 | 236 | 536 | 209 | 345 |
| 84 | 168 | 237 | 537 | 210 | 346 |
| 85 | 169 | 238 | 538 | 211 | 347 |
| 86 | 170 | 239 | 539 | 212 | 348 |
| 87 | 171 | 240 | 540 | 213 | 349 |
| 88 | 172 | 241 | 541 | 214 | 350 |
| 89 | 173 | 242 | 542 | 215 | 351 |
| 90 | 174 | 243 | 543 | 216 | 352 |
| 91 | 175 | 244 | 544 | 217 | 353 |
| 92 | 176 | 245 | 545 | 218 | 354 |
| 93 | 177 | 246 | 546 | 219 | 355 |
| 94 | 178 | 247 | 547 | 220 | 356 |
| 95 | 179 | 248 | 548 | 221 | 357 |
| 96 | 180 | 249 | 549 | 222 | 358 |
| 97 | 181 | 250 | 550 | 223 | 359 |
| 98 | 182 | 251 | 551 | 224 | 360 |
| 99 | 183 | 252 | 552 | 225 | 361 |
| 100 | 184 | 253 | 553 | 226 | 362 |
| 101 | 185 | 254 | 554 | 227 | 363 |
| 102 | 186 | 255 | 555 | 228 | 364 |
| 103 | 187 | 256 | 556 | 229 | 365 |
| 104 | 188 | 257 | 557 | 230 | 366 |
| 105 | 189 | 258 | 558 | 231 | 367 |
| 106 | 190 | 259 | 559 | 232 | 368 |
| 107 | 191 | 260 | 560 | 233 | 369 |
| 108 | 192 | 261 | 561 | 234 | 370 |
| 109 | 193 | 262 | 562 | 235 | 371 |
| 110 | 194 | 263 | 563 | | 372 |
| 111 | 195 | 264 | 564 | | 373 |
| 112 | 196 | 265 | 565 | | 374 |
| 113 | 197 | 266 | 566 | | 375 |
| 114 | 198 | 267 | 567 | | 376 |
| 115 | 199 | 268 | 568 | | 377 |
| 116 | 200 | 269 | 569 | | 378 |
| 117 | 201 | 270 | 570 | | 379 |
| 118 | 202 | 271 | 571 | | 380 |
| 119 | 203 | 272 | 572 | | 381 |
| 120 | 204 | 273 | 573 | | |
| 121 | 205 | 274 | 574 | | |
| 122 | 206 | 275 | 575 | | |
| 123 | 207 | 276 | 576 | | |
| 124 | 208 | 277 | 577 | | |
| 125 | 209 | 278 | 578 | | |
| 126 | 210 | 279 | 579 | | |
| 127 | 211 | 280 | 580 | | |
| 128 | 212 | 281 | 581 | | |
| 129 | 213 | 282 | 582 | | |
| 130 | 214 | 283 | 583 | | |
| 131 | 215 | 284 | 584 | | |
| 132 | 216 | 285 | 585 | | |
| 133 | 217 | 286 | 586 | | |
| 134 | 218 | 287 | 587 | | |
| 135 | 219 | 288 | 588 | | |
| 136 | 220 | 289 | 589 | | |
| 137 | 221 | 290 | 590 | | |
| 138 | 222 | 291 | 591 | | |
| 139 | 223 | 292 | 592 | | |
| 140 | 224 | 293 | 593 | | |
| 141 | 225 | 294 | 594 | | |
| 142 | 226 | 295 | 595 | | |
| 143 | 227 | 296 | 596 | | |
| 144 | 228 | 297 | 597 | | |
| 145 | 229 | 298 | 598 | | |
| 146 | 230 | 299 | 599 | | |
| 147 | 231 | 300 | 600 | | |
| 148 | 232 | 301 | 601 | | |
| 149 | 233 | 302 | 602 | | |
| 150 | 234 | 303 | 603 | | |
| 151 | 235 | 304 | 604 | | |
| 152 | 236 | 305 | 605 | | |
| 153 | 237 | 306 | 606 | | |
| 154 | 238 | 307 | 607 | | |
| 155 | 239 | 308 | 608 | | |
| 156 | 240 | 309 | 609 | | |
| 157 | 241 | 310 | 610 | | |
| 158 | 242 | 311 | 611 | | |
| 159 | 243 | 312 | 612 | | |
| 160 | 244 | 313 | 613 | | |
| 161 | 245 | 314 | 614 | | |
| 162 | 246 | 315 | 615 | | |
| 163 | 247 | 316 | 616 | | |
| 164 | 248 | 317 | 617 | | |
| 165 | 249 | 318 | 618 | | |
| 166 | 250 | 319 | 619 | | |
| 167 | 251 | 320 | 620 | | |
| 168 | 252 | 321 | 621 | | |
| 169 | 253 | 322 | 622 | | |
| 170 | 254 | 323 | 623 | | |
| 171 | 255 | 324 | 624 | | |
| 172 | 256 | 325 | 625 | | |
| 173 | 257 | 326 | 626 | | |
| 174 | 258 | 327 | 627 | | |
| 175 | 259 | 328 | 628 | | |
| 176 | 260 | 329 | 629 | | |
| 177 | 261 | 330 | 630 | | |
| 178 | 262 | 331 | 631 | | |
| 179 | 263 | 332 | 632 | | |
| 180 | 264 | 333 | 633 | | |
| 181 | 265 | 334 | 634 | | |
| 182 | 266 | 335 | 635 | | |
| 183 | 267 | 336 | 636 | | |
| 184 | 268 | 337 | 637 | | |
| 185 | 269 | 338 | 638 | | |
| 186 | 270 | 339 | 639 | | |
| 187 | 271 | 340 | 640 | | |
| 188 | 272 | 341 | 641 | | |
| 189 | 273 | 342 | 642 | | |
| 190 | 274 | 343 | 643 | | |
| 191 | 275 | 344 | 644 | | |
| 192 | 276 | 345 | 645 | | |
| 193 | 277 | 346 | 646 | | |
| 194 | 278 | 347 | 647 | | |
| 195 | 279 | 348 | 648 | | |
| 196 | 280 | 349 | 649 | | |
| 197 | 281 | 350 | 650 | | |
| 198 | 282 | 351 | 651 | | |
| 199 | 283 | 352 | 652 | | |
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| 201 | 285 | 354 | 654 | | |
| 202 | 286 | 355 | 655 | | |
| 203 | 287 | 356 | 656 | | |
| 204 | 288 | 357 | 657 | | |
| 205 | 289 | 358 | 658 | | |
| 206 | 290 | 359 | 659 | | |
| 207 | 291 | 360 | 660 | | |
| 208 | 292 | 361 | 661 | | |
| 209 | 293 | 362 | 662 | | |
| 210 | 294 | 363 | 663 | | |
| 211 | 295 | 364 | 664 | | |
| 212 | 296 | 365 | 665 | | |
| 213 | 297 | 366 | 666 | | |
| 214 | 298 | 367 | 667 | | |
| 215 | 299 | 368 | 668 | | |
| 216 | 300 | 369 | 669 | | |
| 217 | 301 | 370 | 670 | | |
| 218 | 302 | 371 | 671 | | |
| 219 | 303 | 372 | 672 | | |
| 220 | 304 | 373 | 673 | | |
| 221 | 305 | 374 | 674 | | |
| 222 | 306 | 375 | 675 | | |
| 223 | 307 | 376 | 676 | | |
| 224 | 308 | 377 | 677 | | |
| 225 | 309 | 378 | 678 | | |
| 226 | 310 | 379 | 679 | | |
| 227 | 311 | 380 | 680 | | |
| 228 | 312 | 381 | 681 | | |
| 229 | 313 | 382 | 682 | | |
| 230 | 314 | 383 | 683 | | |
| 231 | 315 | 384 | 684 | | |
| 232 | 316 | 385 | 685 | | |
| 233 | 317 | 386 | 686 | | |
| 234 | 318 | 387 | 687 | | |
| 235 | 319 | 388 | 688 | | |
| 236 | 320 | 389 | 689 | | |
| 237 | 321 | 390 | 690 | | |
| 238 | 322 | 391 | 691 | | |
| 239 | 323 | 392 | 692 | | |
| 240 | 324 | 393 | 693 | | |
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| 243 | 327 | 396 | 696 | | |
| 244 | 328 | 397 | 697 | | |
| 245 | 329 | 398 | 698 | | |
| 246 | 330 | 399 | 699 | | |
| 247 | 331 | 400 | 700 | | |
| 248 | 332 | 401 | 701 | | |
| 249 | 333 | 402 | 702 | | |
| 250 | 334 | 403 | 703 | | |
| 251 | 335 | 404 | 704 | | |
| 252 | 336 | 405 | 705 | | |
| 253 | 337 | 406 | 706 | | |
| 254 | 338 | 407 | 707 | | |
| 255 | 339 | 408 | 708 | | |
| 256 | 340 | 409 | 709 | | |
| 257 | 341 | 410 | 710 | | |
| 258 | 342 | 411 | 711 | | |
| 259 | 343 | 412 | 712 | | |
| 260 | 344 | 413 | 713 | | |
| 261 | 345 | 414 | 714 | | |
| 262 | 346 | 415 | 715 | | |
| 263 | 347 | 416 | 716 | | |
| 264 | 348 | 417 | 717 | | |
| 265 | 349 | 418 | 718 | | |
| 266 | 350 | 419 | 719 | | |
| 267 | 351 | 420 | 720 | | |
| 268 | 352 | 421 | 721 | | |
| 269 | 353 | 422 | 722 | | |
| 270 | 354 | 423 | 723 | | |
| 271 | 355 | 424 | 724 | | |
| 272 | 356 | 425 | 725 | | |
| 273 | 357 | 426 | 726 | | |
| 274 | 358 | 427 | 727 | | |
| 275 | 359 | 428 | 728 | | |
| 276 | 360 | 429 | 729 | | |
| 277 | 361 | 430 | 730 | | |
| 278 | 362 | 431 | 731 | | |
| 279 | 363 | 432 | 732 | | |
| 280 | 364 | 433 | 733 | | |
| 281 | 365 | 434 | 734 | | |
| 282 | 366 | 435 | 735 | | |
| 283 | 367 | 436 | 736 | | |
| 284 | 368 | 437 | 737 | | |
| 285 | 369 | 438 | 738 | | |
| 286 | 370 | 439 | 739 | | |
| 287 | 371 | 440 | 740 | | |
| 288 | 372 | 441 | 741 | | |
| 289 | 373 | 442 | 742 | | |
| 290 | 374 | 443 | 743 | | |
| 291 | 375 | 444 | 744 | | |
| 292 | 376 | | 745 | | |
| 293 | 377 | | 746 | | |
| 294 | 378 | | 747 | | |
| 295 | 379 | | 748 | | |
| 296 | 380 | | 749 | | |
| 297 | 381 | | 750 | | |
| 298 | | | 751 | | |
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| 312 | | | 765 | | |
| 313 | | | 766 | | |
| 314 | | | 767 | | |
| 315 | | | 768 | | |
| 316 | | | 769 | | |
| 317 | | | 770 | | |
| 318 | | | 771 | | |
| 319 | | | 772 | | |
| 320 | | | | | |

| | | | | | | | | | | | | | |
|-----|-----|-----------------------------------|----|-----|-----|-----|----|-----|-----|-----|------|------|------|
| 79 | 141 | South Pass, South & East Addition | 42 | 123 | 181 | 274 | 11 | 861 | 68 | 740 | 967 | 871 | 1008 |
| 80 | 143 | | 43 | 124 | 182 | 276 | 12 | 862 | 69 | 741 | 968 | 872 | 1009 |
| 81 | 144 | | | 125 | 183 | 277 | 13 | 863 | 70 | 742 | 969 | 873 | 1010 |
| 82 | 145 | | | 126 | 184 | 278 | 14 | 864 | 71 | 743 | 970 | 874 | 1011 |
| 83 | 146 | | | 127 | 185 | 279 | 15 | 865 | 72 | 744 | 971 | 875 | |
| 84 | 147 | | | 128 | 186 | 280 | 16 | 866 | 73 | 745 | 972 | 876 | |
| 85 | 148 | | | 129 | 187 | 281 | 17 | 867 | 74 | 746 | 973 | 877 | |
| 86 | 149 | | | 130 | 188 | 282 | 18 | 868 | 75 | 747 | 974 | 878 | |
| 87 | 150 | | | 131 | 189 | 283 | 19 | 869 | 76 | 748 | 975 | 879 | |
| 88 | 151 | | | 132 | 190 | 284 | 20 | 870 | 77 | 749 | 976 | 880 | |
| 89 | | | | 133 | 191 | 285 | 21 | 871 | 78 | 750 | 977 | 881 | |
| 90 | | | | 134 | 192 | 286 | 22 | 872 | 79 | 751 | 978 | 882 | |
| 91 | | | | 135 | 193 | 287 | 23 | 873 | 80 | 752 | 979 | 883 | |
| 92 | | | | 136 | 194 | 288 | 24 | 874 | 81 | 753 | 980 | 884 | |
| 93 | | | | 137 | 195 | 289 | 25 | 875 | 82 | 754 | 981 | 885 | |
| 94 | | | | 138 | 196 | 290 | 26 | 876 | 83 | 755 | 982 | 886 | |
| 95 | | | | 139 | 197 | 291 | 27 | 877 | 84 | 756 | 983 | 887 | |
| 96 | | | | 140 | 198 | 292 | 28 | 878 | 85 | 757 | 984 | 888 | |
| 97 | | | | 141 | 199 | 293 | 29 | 879 | 86 | 758 | 985 | 889 | |
| 98 | | | | 142 | 200 | 294 | 30 | 880 | 87 | 759 | 986 | 890 | |
| 99 | | | | 143 | 201 | 295 | 31 | 881 | 88 | 760 | 987 | 891 | |
| 100 | | | | 144 | 202 | 296 | 32 | 882 | 89 | 761 | 988 | 892 | |
| 101 | | | | 145 | 203 | 297 | 33 | 883 | 90 | 762 | 989 | 893 | |
| 102 | | | | 146 | 204 | 298 | 34 | 884 | 91 | 763 | 990 | 894 | |
| 103 | | | | 147 | 205 | 299 | | 885 | 92 | 764 | 991 | 895 | |
| 104 | | | | 148 | 206 | 300 | | 886 | 93 | 765 | 992 | 896 | |
| 105 | | | | 149 | 207 | 301 | | 887 | 94 | 766 | 993 | 897 | |
| 106 | | | | 150 | 208 | 302 | | 888 | 95 | 767 | 994 | 898 | |
| 107 | | | | 151 | 209 | 303 | | 889 | 96 | 768 | 995 | 899 | |
| 108 | | | | 152 | 210 | 304 | | 890 | 97 | 769 | 996 | 900 | |
| 109 | | | | 153 | 211 | 305 | | 891 | 98 | 770 | 997 | 901 | |
| | | | | 154 | 212 | 306 | | 892 | 99 | 771 | 998 | 902 | |
| | | | | 155 | 213 | 307 | | 893 | 100 | 772 | 999 | 903 | |
| | | | | 156 | 214 | 308 | | 894 | 101 | 773 | 1000 | 904 | |
| | | | | 157 | 215 | 309 | | 895 | 102 | 774 | 1001 | 905 | |
| | | | | 158 | 216 | 310 | | 896 | 103 | 775 | 1002 | 906 | |
| | | | | 159 | 217 | 311 | | 897 | 104 | 776 | 1003 | 907 | |
| | | | | 160 | 218 | 312 | | 898 | 105 | 777 | 1004 | 908 | |
| | | | | 161 | 219 | 313 | | 899 | 106 | 778 | 1005 | 909 | |
| | | | | 162 | 220 | 314 | | 900 | 107 | 779 | 1006 | 910 | |
| | | | | 163 | 221 | 315 | | 901 | 108 | 780 | 1007 | 911 | |
| | | | | 164 | 222 | | | 902 | 109 | 781 | 1008 | 912 | |
| | | | | 165 | 223 | | | 903 | 110 | 782 | 1009 | 913 | |
| | | | | 166 | 224 | | | 904 | 111 | 783 | 1010 | 914 | |
| | | | | 167 | 225 | | | 905 | 112 | 784 | 1011 | 915 | |
| | | | | 168 | 226 | | | 906 | 113 | 785 | 1012 | 916 | |
| | | | | 169 | 227 | | | 907 | 114 | 786 | 1013 | 917 | |
| | | | | 170 | 228 | | | 908 | 115 | 787 | 1014 | 918 | |
| | | | | 171 | 229 | | | 909 | 116 | 788 | 1015 | 919 | |
| | | | | 172 | 230 | | | 910 | 117 | 789 | 1016 | 920 | |
| | | | | 173 | 231 | | | 911 | 118 | 790 | 1017 | 921 | |
| | | | | 174 | 232 | | | 912 | 119 | 791 | 1018 | 922 | |
| | | | | 175 | 233 | | | 913 | 120 | 792 | 1019 | 923 | |
| | | | | 176 | 234 | | | 914 | 121 | 793 | 1020 | 924 | |
| | | | | 177 | 235 | | | 915 | 122 | 794 | 1021 | 925 | |
| | | | | 178 | 236 | | | 916 | 123 | 795 | 1022 | 926 | |
| | | | | 179 | 237 | | | 917 | 124 | 796 | 1023 | 927 | |
| | | | | 180 | 238 | | | 918 | 125 | 797 | 1024 | 928 | |
| | | | | 181 | 239 | | | 919 | 126 | 798 | 1025 | 929 | |
| | | | | 182 | 240 | | | 920 | 127 | 799 | 1026 | 930 | |
| | | | | 183 | 241 | | | 921 | 128 | 800 | 1027 | 931 | |
| | | | | 184 | 242 | | | 922 | 129 | 801 | 1028 | 932 | |
| | | | | 185 | 243 | | | 923 | 130 | 802 | 1029 | 933 | |
| | | | | 186 | 244 | | | 924 | 131 | 803 | 1030 | 934 | |
| | | | | 187 | 245 | | | 925 | 132 | 804 | 1031 | 935 | |
| | | | | 188 | 246 | | | 926 | 133 | 805 | 1032 | 936 | |
| | | | | 189 | 247 | | | 927 | 134 | 806 | 1033 | 937 | |
| | | | | 190 | 248 | | | 928 | 135 | 807 | 1034 | 938 | |
| | | | | 191 | 249 | | | 929 | 136 | 808 | 1035 | 939 | |
| | | | | 192 | 250 | | | 930 | 137 | 809 | 1036 | 940 | |
| | | | | 193 | 251 | | | 931 | 138 | 810 | 1037 | 941 | |
| | | | | 194 | 252 | | | 932 | 139 | 811 | 1038 | 942 | |
| | | | | 195 | 253 | | | 933 | 140 | 812 | 1039 | 943 | |
| | | | | 196 | 254 | | | 934 | 141 | 813 | 1040 | 944 | |
| | | | | 197 | 255 | | | 935 | 142 | 814 | 1041 | 945 | |
| | | | | 198 | 256 | | | 936 | 143 | 815 | 1042 | 946 | |
| | | | | 199 | 257 | | | 937 | 144 | 816 | 1043 | 947 | |
| | | | | 200 | 258 | | | 938 | 145 | 817 | 1044 | 948 | |
| | | | | 201 | 259 | | | 939 | 146 | 818 | 1045 | 949 | |
| | | | | 202 | 260 | | | 940 | 147 | 819 | 1046 | 950 | |
| | | | | 203 | 261 | | | 941 | 148 | 820 | 1047 | 951 | |
| | | | | 204 | 262 | | | 942 | 149 | 821 | 1048 | 952 | |
| | | | | 205 | 263 | | | 943 | 150 | 822 | 1049 | 953 | |
| | | | | 206 | 264 | | | 944 | 151 | 823 | 1050 | 954 | |
| | | | | 207 | 265 | | | 945 | 152 | 824 | 1051 | 955 | |
| | | | | 208 | 266 | | | 946 | 153 | 825 | 1052 | 956 | |
| | | | | 209 | 267 | | | 947 | 154 | 826 | 1053 | 957 | |
| | | | | 210 | 268 | | | 948 | 155 | 827 | 1054 | 958 | |
| | | | | 211 | 269 | | | 949 | 156 | 828 | 1055 | 959 | |
| | | | | 212 | 270 | | | 950 | 157 | 829 | 1056 | 960 | |
| | | | | 213 | 271 | | | 951 | 158 | 830 | 1057 | 961 | |
| | | | | 214 | 272 | | | 952 | 159 | 831 | 1058 | 962 | |
| | | | | 215 | 273 | | | 953 | 160 | 832 | 1059 | 963 | |
| | | | | 216 | 274 | | | 954 | 161 | 833 | 1060 | 964 | |
| | | | | 217 | 275 | | | 955 | 162 | 834 | 1061 | 965 | |
| | | | | 218 | 276 | | | 956 | 163 | 835 | 1062 | 966 | |
| | | | | 219 | 277 | | | 957 | 164 | 836 | 1063 | 967 | |
| | | | | 220 | 278 | | | 958 | 165 | 837 | 1064 | 968 | |
| | | | | 221 | 279 | | | 959 | 166 | 838 | 1065 | 969 | |
| | | | | 222 | 280 | | | 960 | 167 | 839 | 1066 | 970 | |
| | | | | 223 | 281 | | | 961 | 168 | 840 | 1067 | 971 | |
| | | | | 224 | 282 | | | 962 | 169 | 841 | 1068 | 972 | |
| | | | | 225 | 283 | | | 963 | 170 | 842 | 1069 | 973 | |
| | | | | 226 | 284 | | | 964 | 171 | 843 | 1070 | 974 | |
| | | | | 227 | 285 | | | 965 | 172 | 844 | 1071 | 975 | |
| | | | | 228 | 286 | | | 966 | 173 | 845 | 1072 | 976 | |
| | | | | 229 | 287 | | | 967 | 174 | 846 | 1073 | 977 | |
| | | | | 230 | 288 | | | 968 | 175 | 847 | 1074 | 978 | |
| | | | | 231 | 289 | | | 969 | 176 | 848 | 1075 | 979 | |
| | | | | 232 | 290 | | | 970 | 177 | 849 | 1076 | 980 | |
| | | | | 233 | 291 | | | 971 | 178 | 850 | 1077 | 981 | |
| | | | | 234 | 292 | | | 972 | 179 | 851 | 1078 | 982 | |
| | | | | 235 | 293 | | | 973 | 180 | 852 | 1079 | 983 | |
| | | | | 236 | 294 | | | 974 | 181 | 853 | 1080 | 984 | |
| | | | | 237 | 295 | | | 975 | 182 | 854 | 1081 | 985 | |
| | | | | 238 | 296 | | | 976 | 183 | 855 | 1082 | 986 | |
| | | | | 239 | 297 | | | 977 | 184 | 856 | 1083 | 987 | |
| | | | | 240 | 298 | | | 978 | 185 | 857 | 1084 | 988 | |
| | | | | 241 | 299 | | | 979 | 186 | 858 | 1085 | 989 | |
| | | | | 242 | 300 | | | 980 | 187 | 859 | 1086 | 990 | |
| | | | | 243 | 301 | | | 981 | 188 | 860 | 1087 | 991 | |
| | | | | 244 | 302 | | | 982 | 189 | 861 | 1088 | 992 | |
| | | | | 245 | 303 | | | 983 | 190 | 862 | 1089 | 993 | |
| | | | | 246 | 304 | | | 984 | 191 | 863 | 1090 | 994 | |
| | | | | 247 | 305 | | | 985 | 192 | 864 | 1091 | 995 | |
| | | | | 248 | 306 | | | 986 | 193 | 865 | 1092 | 996 | |
| | | | | 249 | 307 | | | 987 | 194 | 866 | 1093 | 997 | |
| | | | | 250 | 308 | | | 988 | 195 | 867 | 1094 | 998 | |
| | | | | 251 | 309 | | | 989 | 196 | 868 | 1095 | 999 | |
| | | | | 252 | 310 | | | 990 | 197 | 869 | 1096 | 1000 | |
| | | | | 253 | 311 | | | 991 | 198 | 870 | 1097 | 100 | |

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| 128 | 129 | 130 | 131 | 132 | 133 | 134 | 135 | 136 | 137 | 138 | 139 | 140 | 141 | 142 | 143 | 144 | 145 | 146 | 147 | 148 | 149 | 150 | 151 | 152 | 153 | 154 | 155 | 156 | 157 | 158 | 159 | 160 | 161 | 162 | 163 | 164 | 165 | 166 | 167 | 168 | 169 | 170 | 171 | 172 | 173 | 174 | 175 | 176 | 177 | 178 | 179 | 180 | 181 | 182 | 183 | 184 | 185 | 186 | 187 | 188 | 189 | 190 | 191 | 192 | 193 | 194 | 195 | 196 | 197 | 198 | 199 | 200 | 201 | 202 | 203 | 204 | 205 | 206 | 207 | 208 | 209 | 210 | 211 | 212 | 213 | 214 | 215 | 216 | 217 | 218 | 219 | 220 | 221 | 222 | 223 | 224 | 225 | 226 | 227 | 228 | 229 | 230 | 231 | 232 | 233 | 234 | 235 | 236 | 237 | 238 | 239 | 240 | 241 | 242 | 243 | 244 | 245 | 246 | 247 | 248 | 249 | 250 | 251 | 252 | 253 | 254 | 255 | 256 | 257 | 258 | 259 | 260 | 261 | 262 | 263 | 264 | 265 | 266 | 267 | 268 | 269 | 270 | 271 | 272 | 273 | 274 | 275 | 276 | 277 | 278 | 279 | 280 | 281 | 282 | 283 | 284 | 285 | 286 | 287 | 288 | 289 | 290 | 291 | 292 | 293 | 294 | 295 | 296 | 297 | 298 | 299 | 300 | 301 | 302 | 303 | 304 | 305 | 306 | 307 | 308 | 309 | 310 | 311 | 312 | 313 | 314 | 315 | 316 | 317 | 318 | 319 | 320 | 321 | 322 | 323 | 324 | 325 | 326 | 327 | 328 | 329 | 330 | 331 | 332 | 333 | 334 | 335 | 336 | 337 | 338 | 339 | 340 | 341 | 342 | 343 | 344 | 345 | 346 | 347 | 348 | 349 | 350 | 351 | 352 | 353 | 354 | 355 | 356 | 357 | 358 | 359 | 360 | 361 | 362 | 363 | 364 | 365 | 366 | 367 | 368 | 369 | 370 | 371 | 372 | 373 | 374 | 375 | 376 | 377 | 378 | 379 | 380 | 381 | 382 | 383 | 384 | 385 | 386 | 387 | 388 | 389 | 390 | 391 | 392 | 393 | 394 | 395 | 396 | 397 | 398 | 399 | 400 | 401 | 402 | 403 | 404 | 405 | 406 | 407 | 408 | 409 | 410 | 411 | 412 | 413 | 414 | 415 | 416 | 417 | 418 | 419 | 420 | 421 | 422 | 423 | 424 | 425 | 426 | 427 | 428 | 429 | 430 | 431 | 432 | 433 | 434 | 435 | 436 | 437 | 438 | 439 | 440 | 441 | 442 | 443 | 444 | 445 | 446 | 447 | 448 | 449 | 450 | 451 | 452 | 453 | 454 | 455 | 456 | 457 | 458 | 459 | 460 | 461 | 462 | 463 | 464 | 465 | 466 | 467 | 468 | 469 | 470 | 471 | 472 | 473 | 474 | 475 | 476 | 477 | 478 | 479 | 480 | 481 | 482 | 483 | 484 | 485 | 486 | 487 | 488 | 489 | 490 | 491 | 492 | 493 | 494 | 495 | 496 | 497 | 498 | 499 | 500 | 501 | 502 | 503 | 504 | 505 | 506 | 507 | 508 | 509 | 510 | 511 | 512 | 513 | 514 | 515 | 516 | 517 | 518 | 519 | 520 | 521 | 522 | 523 | 524 | 525 | 526 | 527 | 528 | 529 | 530 | 531 | 532 | 533 | 534 | 535 | 536 | 537 | 538 | 539 | 540 | 541 | 542 | 543 | 544 | 545 | 546 | 547 | 548 | 549 | 550 | 551 | 552 | 553 | 554 | 555 | 556 | 557 | 558 | 559 | 560 | 561 | 562 | 563 | 564 | 565 | 566 | 567 | 568 | 569 | 570 | 571 | 572 | 573 | 574 | 575 | 576 | 577 | 578 | 579 | 580 | 581 | 582 | 583 | 584 | 585 | 586 | 587 | 588 | 589 | 590 | 591 | 592 | 593 | 594 | 595 | 596 | 597 | 598 | 599 | 600 | 601 | 602 | 603 | 604 | 605 | 606 | 607 | 608 | 609 | 610 | 611 | 612 | 613 | 614 | 615 | 616 | 617 | 618 | 619 | 620 | 621 | 622 | 623 | 624 | 625 | 626 | 627 | 628 | 629 | 630 | 631 | 632 | 633 | 634 | 635 | 636 | 637 | 638 | 639 | 640 | 641 | 642 | 643 | 644 | 645 | 646 | 647 | 648 | 649 | 650 | 651 | 652 | 653 | 654 | 655 | 656 | 657 | 658 | 659 | 660 | 661 | 662 | 663 | 664 | 665 | 666 | 667 | 668 | 669 | 670 | 671 | 672 | 673 | 674 | 675 | 676 | 677 | 678 | 679 | 680 | 681 | 682 | 683 | 684 | 685 | 686 | 687 | 688 | 689 | 690 | 691 | 692 | 693 | 694 | 695 | 696 | 697 | 698 | 699 | 700 | 701 | 702 | 703 | 704 | 705 | 706 | 707 | 708 | 709 | 710 | 711 | 712 | 713 | 714 | 715 | 716 | 717 | 718 | 719 | 720 | 721 | 722 | 723 | 724 | 725 | 726 | 727 | 728 | 729 | 730 | 731 | 732 | 733 | 734 | 735 | 736 | 737 | 738 | 739 | 740 | 741 | 742 | 743 | 744 | 745 | 746 | 747 | 748 | 749 | 750 | 751 | 752 | 753 | 754 | 755 | 756 | 757 | 758 | 759 | 760 | 761 | 762 | 763 | 764 | 765 | 766 | 767 | 768 | 769 | 770 | 771 | 772 | 773 | 774 | 775 | 776 | 777 | 778 | 779 | 780 | 781 | 782 | 783 | 784 | 785 | 786 | 787 | 788 | 789 | 790 | 791 | 792 | 793 | 794 | 795 | 796 | 797 | 798 | 799 | 800 | 801 | 802 | 803 | 804 | 805 | 806 | 807 | 808 | 809 | 810 | 811 | 812 | 813 | 814 | 815 | 816 | 817 | 818 | 819 | 820 | 821 | 822 | 823 | 824 | 825 | 826 | 827 | 828 | 829 | 830 | 831 | 832 | 833 | 834 | 835 | 836 | 837 | 838 | 839 | 840 | 841 | 842 | 843 | 844 | 845 | 846 | 847 | 848 | 849 | 850 | 851 | 852 | 853 | 854 | 855 | 856 | 857 | 858 | 859 | 860 | 861 | 862 | 863 | 864 | 865 | 866 | 867 | 868 | 869 | 870 | 871 | 872 | 873 | 874 | 875 | 876 | 877 | 878 | 879 | 880 | 881 | 882 | 883 | 884 | 885 | 886 | 887 | 888 | 889 | 890 | 891 | 892 | 893 | 894 | 895 | 896 | 897 | 898 | 899 | 900 | 901 | 902 | 903 | 904 | 905 | 906 | 907 | 908 | 909 | 910 | 911 | 912 | 913 | 914 | 915 | 916 | 917 | 918 | 919 | 920 | 921 | 922 | 923 | 924 | 925 | 926 | 927 | 928 | 929 | 930 | 931 | 932 | 933 | 934 | 935 | 936 | 937 | 938 | 939 | 940 | 941 | 942 | 943 | 944 | 945 | 946 | 947 | 948 | 949 | 950 | 951 | 952 | 953 | 954 | 955 | 956 | 957 | 958 | 959 | 960 | 961 | 962 | 963 | 964 | 965 | 966 | 967 | 968 | 969 | 970 | 971 | 972 | 973 | 974 | 975 | 976 | 977 | 978 | 979 | 980 | 981 | 982 | 983 | 984 | 985 | 986 | 987 | 988 | 989 | 990 | 991 | 992 | 993 | 994 | 995 | 996 | 997 | 998 | 999 | 1000 | 1001 | 1002 | 1003 | 1004 | 1005 | 1006 | 1007 | 1008 | 1009 | 1010 | 1011 | 1012 | 1013 | 1014 | 1015 | 1016 | 1017 | 1018 | 1019 | 1020 | 1021 | 1022 | 1023 | 1024 | 1025 | 1026 | 1027 | 1028 | 1029 | 1030 | 1031 | 1032 | 1033 | 1034 | 1035 | 1036 | 1037 | 1038 | 1039 | 1040 | 1041 | 1042 | 1043 | 1044 | 1045 | 1046 | 1047 | 1048 | 1049 | 1050 | 1051 | 1052 | 1053 | 1054 | 1055 | 1056 | 1057 | 1058 | 1059 | 1060 | 1061 | 1062 | 1063 | 1064 | 1065 | 1066 | 1067 | 1068 | 1069 | 1070 | 1071 | 1072 | 1073 | 1074 | 1075 | 1076 | 1077 | 1078 | 1079 | 1080 | 1081 | 1082 | 1083 | 1084 | 1085 | 1086 | 1087 | 1088 | 1089 | 1090 | 1091 | 1092 | 1093 | 1094 | 1095 | 1096 | 1097 | 1098 | 1099 | 1100 | 1101 | 1102 | 1103 | 1104 | 1105 | 1106 | 1107 | 1108 | 1109 | 1110 | 1111 | 1112 | 1113 | 1114 | 1115 | 1116 | 1117 | 1118 | 1119 | 1120 | 1121 | 1122 | 1123 | 1124 | 1125 | 1126 | 1127 | 1128 | 1129 | 1130 | 1131 | 1132 | 1133 | 1134 | 1135 | 1136 | 1137 | 1138 | 1139 | 1140 | 1141 | 1142 | 1143 | 1144 | 1145 | 1146 | 1147 | 1148 | 1149 | 1150 | 1151 | 1152 | 1153 | 1154 | 1155 | 1156 | 1157 | 1158 | 1159 | 1160 | 1161 | 1162 | 1163 | 1164 | 1165 | 1166 | 1167 | 1168 | 1169 | 1170 | 1171 | 1172 | 1173 | 1174 | 1175 | 1176 | 1177 | 1178 | 1179 | 1180 | 1181 | 1182 | 1183 | 1184 | 1185 | 1186 | 1187 | 1188 | 1189 | 1190 | 1191 | 1192 | 1193 | 1194 | 1195 | 1196 | 1197 | 1198 | 1199 | 1200 | 1201 | 1202 | 1203 | 1204 | 1205 | 1206 | 1207 | 1208 | 1209 | 1210 | 1211 | 1212 | 1213 | 1214 | 1215 | 1216 | 1217 | 1218 | 1219 | 1220 | 1221 | 1222 | 1223 | 1224 | 1225 | 1226 | 1227 | 1228 | 1229 | 1230 | 1231 | 1232 | 1233 | 1234 | 1235 | 1236 | 1237 | 1238 | 1239 | 1240 | 1241 | 1242 | 1243 | 1244 | 1245 | 1246 | 1247 | 1248 | 1249 | 1250 | 1251 | 1252 | 1253 | 1254 | 1255 | 1256 | 1257 | 1258 | 1259 | 1260 | 1261 | 1262 | 1263 | 1264 | 1265 | 1266 | 1267 | 1268 | 1269 | 1270 | 1271 | 1272 | 1273 | 1274 | 1275 | 1276 | 1277 | 1278 | 1279 | 1280 | 1281 | 1282 | 1283 | 1284 | 1285 | 1286 | 1287 | 1288 | 1289 | 1290 | 1291 | 1292 | 1293 | 1294 | 1295 | 1296 | 1297 | 1298 | 1299 | 1300 | 1301 | 1302 | 1303 | 1304 | 1305 | 1306 | 1307 | 1308 | 1309 | 1310 | 1311 | 1312 | 1313 | 1314 | 1315 | 1316 | 1317 | 1318 | 1319 | 1320 | 1321 | 1322 | 1323 | 1324 | 1325 | 1326 | 1327 | 1328 | 1329 | 1330 | 1331 | 1332 | 1333 | 1334 | 1335 | 1336 | 1337 | 1338 | 1339 | 1340 | 1341 | 1342 | 1343 | 1344 | 1345 | 1346 | 1347 | 1348 | 1349 | 1350 | 1351 | 1352 | 1353 | 1354 | 1355 | 1356 | 1357 | 1358 | 1359 | 1360 | 1361 | 1362 | 1363 | 1364 | 1365 | 1366 | 1367 | 1368 | 1369 | 1370 | 1371 | 1372 | 1373 | 1374 | 1375 | 1376 | 1377 | 1378 | 1379 | 1380 | 1381 | 1382 | 1383 | 1384 | 1385 | 1386 | 1387 | 1388 | 1389 | 1390 | 1391 | 1392 | 1393 | 1394 | 1395 | 1396 | 1397 | 1398 | 1399 | 1400 | 1401 | 1402 | 1403 | 1404 | 1405 | 1406 | 1407 | 1408 | 1409 | 1410 | 1411 | 1412 | 1413 | 1414 | 1415 | 1416 | 1417 | 1418 | 1419 | 1420 | 1421 | 1422 | 1423 | 1424 | 1425 | 1426 | 1427 | 1428 | 1429 | 1430 | 1431 | 1432 | 1433 | 1434 | 1435 | 1436 | 1437 | 1438 | 1439 | 1440 | 1441 | 1442 | 1443 | 1444 | 1445 | 1446 | 1447 | 1448 | 1449 | 1450 | 1451 | 1452 | 1453 | 1454 | 1455 | 1456 | 1457 | 1458 | 1459 | 1460 | 1461 | 1462 | 1463 | 1464 | 1465 | |
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13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be on Form SMS-2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

Stipulation No. 1--Protection of Archaeological Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

- (i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or
- (ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

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Walker Ridge

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|----|-----|-----|-----|-----|-----|-----|
| 20 | 98 | 146 | 256 | 346 | 431 | 521 |
| 21 | 99 | 150 | 257 | 353 | 433 | 522 |
| 22 | 100 | 151 | 258 | 352 | 434 | 523 |
| 23 | 101 | 152 | 259 | 353 | 435 | 524 |
| 24 | 102 | 153 | 260 | 370 | 441 | 525 |
| 25 | 103 | 154 | 261 | 371 | 444 | 526 |
| 26 | 104 | 155 | 262 | 372 | 445 | 527 |
| 27 | 105 | 156 | 263 | 373 | 446 | 528 |
| 28 | 106 | 157 | 264 | 374 | 447 | 529 |
| 29 | 107 | 158 | 265 | 375 | 448 | 530 |
| 30 | 108 | 159 | 266 | 376 | 449 | 531 |
| 31 | 109 | 160 | 267 | 377 | 450 | 532 |
| 32 | 110 | 161 | 268 | 378 | 451 | 533 |
| 33 | 111 | 162 | 269 | 379 | 452 | 534 |
| 34 | 112 | 163 | 270 | 380 | 453 | 535 |
| 35 | 113 | 165 | 290 | 381 | 455 | 536 |
| 36 | 114 | 177 | 291 | 383 | 456 | 537 |
| 37 | 115 | 178 | 299 | 384 | 457 | 538 |
| 38 | 116 | 179 | 300 | 387 | 458 | 539 |
| 39 | 117 | 180 | 310 | 388 | 478 | 540 |
| 40 | 118 | 181 | 311 | 389 | 479 | 541 |
| 41 | 119 | 182 | 312 | 390 | 480 | 542 |
| 42 | 121 | 189 | 313 | 381 | 488 | 543 |
| 43 | 122 | 180 | 321 | 397 | 489 | 544 |
| 44 | 123 | 209 | 327 | 401 | 490 | 545 |
| 45 | 127 | 210 | 332 | 405 | 496 | 546 |
| 46 | 128 | 217 | 333 | 408 | 573 | 547 |
| 47 | 129 | 222 | 334 | 407 | 574 | 548 |
| 48 | 133 | 223 | 335 | 408 | 575 | 549 |
| 49 | 134 | 224 | 336 | 413 | 617 | 550 |
| 50 | 135 | 225 | 339 | 414 | 618 | 551 |
| 51 | 136 | 226 | 340 | 415 | 622 | 552 |
| 52 | 141 | 233 | 343 | 425 | 623 | 553 |
| 53 | 142 | 234 | 343 | 425 | 623 | 554 |
| 54 | 143 | 253 | 344 | 429 | 668 | 555 |
| 55 | 143 | 253 | 345 | 430 | 667 | 556 |
| 56 | 145 | 254 | 345 | | | 557 |

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Topographic Features.

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.)

The banks which cause this stipulation to be applied to blocks of the Central Gulf of Mexico are:

| Bank Name | No Activity Zone Isobath (meters) | Bank Name | No Activity Zone Isobath (meters) |
|---------------------------|--------------------------------------|---------------------------|--------------------------------------|
| McGrail Bank | 85 | Jakkula Bank | 85 |
| Bouma Bank | 85 | Sweet Bank ¹ | 85 |
| Rezak Bank | 85 | Bright Bank | 85 |
| Sidner Bank | 85 | Geyer Bank ³ | 85 |
| Rankin Bank | 85 | Machell Bank ³ | 82 |
| Sackett Bank ² | 85 | Alderice Bank | 80 |
| Ewing Bank | 85 | Fishnet Bank ² | 76 |
| Diaphus Bank ² | 85 | 29 Fathom Bank | 64 |
| Parker Bank | 85 | Sonnier Bank | 55 |

¹Only paragraph (a) of the stipulation applies.

²Only paragraphs (a) and (b) apply.

³Western Gulf of Mexico bank with a portion of its "3-Mile Zone" in the Central Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

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(c) Operations within the area shown as "1-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 3--Live Bottoms.

(To be included only in leases on the following blocks:

Main Pass Area, South and East Addition, Blocks 190, 194, 198, 219-226, 244-266, 276-290; Vioeca Knoll, Blocks 473-476, 521, 522, 564, 565, 566, 609, 610, 654, 692-698, 734, 778.)

For the purpose of this stipulation, "live bottom areas" are defined as seagrass communities; or those areas which contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or areas whose lithotype favors the accumulation of turtles, fishes, and other fauna.

Prior to any drilling activities or the construction or placement of any structure for exploration or development on this lease, including, but not limited to, anchoring, well drilling, and pipeline and platform placement, the lessee will submit to the Regional Director (RD) a live bottom survey report containing a bathymetry map prepared utilizing remote sensing techniques. The bathymetry map shall be prepared for the purpose of determining the presence or absence of live bottoms which could be impacted by the proposed activity. This map shall encompass such an area of the seafloor where surface disturbing activities, including anchoring, may occur.

If it is determined that the live bottoms might be adversely impacted by the proposed activity, the RD will require the lessee to undertake any measure deemed economically, environmentally, and technically feasible to protect the pinnacle area. These measures may include, but are not limited to, the following:

- (a) the relocation of operations; and
- (b) the monitoring to assess the impact of the activity on the live bottoms.

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commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in the individual designated warning areas shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

| Warning Areas' Command Headquarters | |
|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Warning Areas | Command Headquarters |
| W-155-A W-155-B (For Agreement) | Chief, Naval Air Training Naval Air Station ATTN: Lt. Commander Velez, USN, or Lt. Jex Corpus Christi, Texas 78419-5100 Telephone: (512) 939-3862/3902 |
| W-155-A W-155-B (For Operational Control) | Fleet Area Control & Surveillance Facility (FACSFAC) Naval Air Station ATTN: OSI Reser Pensacola, Florida 32508 Telephone: (904) 452-2735/4671 |
| W-92 | Naval Air Station Air Operations Department Air Traffic Division/Code 52 ATTN: ACC Henry New Orleans, Louisiana 70146-5000 Telephone: (504) 393-3100/3101 |

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Stipulation No. 4--Military Areas.

(This stipulation will be included in leases located within the Warning Areas and Eglin Water Test Areas 1 and 3, as shown on Map 1 described in paragraph 12.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS) to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U. S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and hold and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, or to indemnify and hold and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees, and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the

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Warning Areas

M-453

Command Headquarters

Air National Guard - CRTC

Gulfport/ACMI

ATTN: Tech. Sgt. Crawford
or Staff. Sgt. Wyche

Gulfport, Mississippi 39507

Telephone: (601) 867-2433

Eglin Water:

Test Areas

1 and 3

Air Force Development Test Center

3246th Test Wing/CCU

ATTN: Mr. Vickory

Eglin AFB, Florida 32542

Telephone: (904) 862-8963/9757

14. Information to Lessees.

(a) **Supplemental Documents.** For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone at (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2759.

(b) **Navigation Safety.** Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended, and the Deepwater Port Act (33 U.S.C. 1501-1524). Bidders are advised that the U.S. Coast Guard published a notice of petition for rulemaking to expand the existing safety zone around the Louisiana Offshore Oil Platform (Federal Register, Vol. 57, No. 13, p. 2236, January 21, 1992).

U.S. Army Corps of Engineers (COE) permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander William P. Prosser, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, telephone (504) 589-6901. For COE information, Prospective Bidders should contact Mr. Ron Ventola, CELMN-OD-S, Post Office Box 60267, New Orleans, Louisiana 70160-0267, or telephone (504) 862-2255.

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(c) **Offshore Pipelines.** Bidders are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) **2-Year Leases.** Bidders are advised that any lease issued for a term of 2 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect. See 30 CFR 256.37.

(e) **Affirmative Action.** Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986), would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) **Ordinance Disposal Areas.** Bidders are cautioned as to the existence of two inactive ordinance disposal areas in the Mississippi Canyon area, shown on Map 1. See paragraph 12(b). These areas were used to dispose of ordinance of unknown quantity and composition. Water depths range from 750 to 1,525 meters. Bottom sediments in both areas are soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

The U. S. Air Force has released an indeterminable amount of unexploded ordinance throughout Eglin Water Test Areas 1 and 3. The exact location of the unexploded ordinance is unknown, and lessees are advised that all lease blocks included in this sale within these water test areas should be considered potentially hazardous to drilling and platform and pipeline placement.

(g) **Proposed Naval Barge-Mounted Operation.** Bidders are advised that the U.S. Navy has released a Final Environmental Impact Statement on its plans for operation of an Electromagnetic Pulse Radiation Environment Simulator for Ships (Empress II) on a barge 29 miles south of the Mississippi-Alabama border. The project is expected to last 20 years and would run about 60 days a

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Scott Sewell
 Director, Minerals Management Service
 Scott Sewell

Approved:

Richard Roldan
 Assistant Secretary, Land and Minerals Management
 Richard Roldan

APR 8 1992

Date

year between November and April. For further information, bidders may contact Lt. Comdr. Joseph Osborne at (703) 602-3348, or write Commander, Naval Sea Systems Command (PMS-423), Department of the Navy, Washington, D.C. 20362-5101.

(h) **Communications Towers.** The Department of Defense, U.S. Air Force, has installed seven military communications towers in the Chandeleur/Mobile/Viosca Knoll area which support Air Combat Maneuvering Instrumentation (ACMI). This project may impose certain restrictions on oil and gas activities in that area since no activity can take place within 500 feet of a tower site, and unobstructed lines of sight must be maintained between towers. The seven towers are located within Mobile, Blocks 769, 819 and 990; Viosca Knoll, Block 116; and Chandeleur Area, Blocks 33, and 61; and Chandeleur Area, East Addition, Block 39. Information and maps of the specific locations and line of sight crossings for ACMI towers may be obtained from Mr. Wallace Williams, Minerals Management Service, (504) 736-2772.

(i) **Archaeological Resources.** Bidders are advised of the Notice to Lessees (NRL) affecting the historic shipwreck survey requirement published in the Federal Register December 20, 1991, pages 66076-66082, with an effective date of February 17, 1992. The NRL details the survey methodology, including a more intensive survey with line spacing 50 meters apart, and report writing requirements. A Letter to Lessees (LTL) of November 30, 1990, lists those blocks identified as having a high probability for encountering historic shipwrecks. Copies of both the NRL and LTL may be obtained by contacting the MMS Public Information Unit (see paragraph 14(a)).

(j) **Live Bottoms.** Bidders are advised of the addition of three blocks to Stipulation No. 3--Live Bottoms. These blocks are located in Main Pass, South and East Addition, blocks 190, 194, and 198.

(k) **Proposed Rigs to Reefs.** Bidders are advised that there are OCS artificial reef sites and planning sites for the Gulf of Mexico. These are generally located in water depths of less than 200 meters. While all existing and proposed sites require a permit from the U.S. Army Corps of Engineers, this "Rigs to Reefs" program is implemented through State sponsorship. For more information, prospective bidders should contact the State Artificial Reef Coordinator for their areas of interest:

Alabama
 Mr. Walter M. Tatum
 (205) 968-7578

Mississippi
 Mr. Mike Buchanan
 (601) 383-5860

Louisiana
 Mr. Rick Kasprzak
 (504) 765-2375

Texas
 Mr. Hal R. Osburn
 (512) 389-4863

Billing Code: 4310-WR

DEPARTMENT OF THE INTERIOR
Minerals Management Service
Outer Continental Shelf
Central Gulf of Mexico

Notice of Leasing Systems, Sale 139

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. Identifying the bidding systems to be used and the reasons for such use; and
2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding systems to be used. In the Outer Continental Shelf (OCS) Sale 139, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section 8(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section 8(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Central Gulf of Mexico (Sale 139) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system.

As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

- a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.
- b. Blocks in deep water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Central Gulf of Mexico Lease Sale 139 - Final. Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Approved:

Scott Sewell
Director, Minerals Management Service

Richard Noldan
Mining Assistant Secretary - Land and Minerals Management
Richard Noldan

Date: April 3, 1992

[FR Docs. 92-8032; 8034 Filed 4-7-92; 8:45 am]

BILLING CODE 4310-WR-C

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Register

Wednesday
April 8, 1992

Part VII

Department of Housing and Urban Development

Office of the Secretary

Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-92-3038; FR-2736-N-06]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waiver requests: December 1, 1991 through February 29, 1992.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This notice is the fourth of a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this Notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Grady J. Norris, Assistant General Counsel for Regulations, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (Telephone 202-755-7055. This is not a toll-free number.) For information concerning a particular waiver action about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3)), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;
2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;
3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a notice in the *Federal Register*. These

Notices (each covering the period since the most recent previous notification) shall:

- a. Identify the project, activity, or undertaking involved;
- b. Describe the nature of the provision waived, and the designation of the provision;
- c. Indicate the name and title of the person who granted the waiver request;
- d. Describe briefly the grounds for approval of the request;
- e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the fourth notice of its kind to be published under section 106. The first notice, published on August 26, 1991, updated waiver-grant activity by the Department from the period immediately following passage of the Reform Act through the end of May 1991. Thereafter, notices updating waiver-grant activity for the ensuing three-month periods were published on October 28, 1991 and January 13, 1992.

Today's document updates HUD's waiver-grant activity through February 29, 1992. In approximately three months, the Department will publish a similar notice, providing information about waiver-grant activity for the period from March 1, 1992 through May 31, 1992.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in part 24) would come early in the sequence, while waivers in the section 8 and section 202 programs (24 CFR chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in Title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both 811.105(b) and 811.107(a) would appear sequentially in the listing under 811.105(b).)

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is

published, the next updated report will include these earlier actions, as well as those that occur between March 1 and May 31, 1992.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the appendix that follows this Notice.

Dated: March 27, 1992.

Alfred A. DelliBovi,
Deputy Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development December 1, 1991 through February 29, 1992

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 1 through 9 in this listing is: Morris E. Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, phone: (202) 708-2700.

1. *Regulation:* 24 CFR 203.32(c)(3).

Project Activity: Enterprise Zone Housing Proposal, Emanuel Hospital and Health Center, Portland, OR.

Nature of Requirement: Regulations require that the sum of the principal amount of the insured mortgage and any second mortgage may not exceed the loan-to-value limitation applicable to the insured mortgage.

Granted by: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 10, 1992.

Reason Waived: The Emanuel Hospital and Health Center proposed to provide downpayment assistance secured by second mortgages for their employees who purchase homes in an enterprise zone. In order to expand homeownership and affordable housing opportunities and promote housing in the enterprise zone, HUD approved a waiver of the regulations to permit the loan to value ratio of the combined first and second mortgages to exceed the applicable loan-to-value ratio. However, purchasers must pay at least 3 percent of the cost of acquisition in cash or its equivalent (gift funds, sweat equity, or secured loan on other assets).

2. *Regulation:* 24 CFR 203.49(c).

Project/Activity: CTX Mortgage Company and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first

adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted by: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 2, 1992.

Reason Waived: CTX Mortgage Company requested a waiver to permit extension of the initial adjustment date on two loans, in order to make them eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagors. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagors to the modification of the initial adjustment date.

3. *Regulation:* 24 CFR 203.49(c).

Project/Activity: Independence One Mortgage Corporation and Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted by: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 19, 1992.

Reason Waived: Independence One requested a waiver to permit extension of the initial adjustment date on one loan, in order to make it eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagor. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagor to the modification of the initial adjustment date.

4. *Regulation:* 24 CFR 203.49(c).

Project/Activity: CTX Mortgage Company Adjustable Rate Mortgages.

Nature of Requirement: The regulation, cited above, requires that interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months and no later than 18 months from the due date of the mortgagor's first monthly payment.

Granted by: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 19, 1992.

Reason Waived: CTX Mortgage Company requested a waiver to permit extension of the initial adjustment date on 13 loans, in order to make them eligible for placement in a GNMA pool. Ineligibility for the pool would result in a financial hardship to the mortgagee. Extension of the date would not have an adverse effect on the mortgagors. Therefore, to facilitate the continuing participation of this mortgagee in the FHA Adjustable Rate Mortgage Program, a waiver was granted conditioned on the mortgagee obtaining written consent from the mortgagors to the modification of the initial adjustment date.

5. *Regulation:* 24 CFR 203.50(g).

Project/Activity: City of Pueblo, 203(k) Rehabilitation Loans.

Nature of Requirement: The regulation allows for the utilization of higher market values for properties where the unit of local government demonstrates that the properties are located in an area of concentrated redevelopment or revitalization and the prescribed loan limitation prevents utilization of the program to accomplish rehabilitation.

Granted by: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 27, 1991.

Reason Waived: If the appraised value of the existing properties in this area were based on the value of other properties in the same area, rehabilitation under the 203(k) program could not take place because the maximum loan to value ratios would be exceeded. Since the City of Pueblo is involved in redeveloping and revitalizing this area of their city and they will help low and moderate income families by offering affordable housing opportunities, a waiver of the market value limitation was granted in order to allow property values to be based on values in equivalent neighborhoods in other parts of the community that had already been rehabilitated. This waiver will help the City of Pueblo expand affordable housing opportunities in their community.

6. *Regulation:* 24 CFR 203.50(g).

Project/Activity: Greenlaw Historical District of Memphis, TN, 203(k) Rehabilitation Loans.

Nature of Requirement: The regulation allows for the utilization of higher market values for properties where the unit of local government demonstrates that the properties are located in an area of concentrated redevelopment or revitalization and the prescribed loan

limitation prevents utilization of the program to accomplish rehabilitation.

Granted by: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 27, 1991.

Reason Waived: If the appraised value of the existing properties in this area were based on the value of other properties in the same area, rehabilitation under the 203(k) program could not take place because the maximum loan to value ratios would be exceeded. Since the City of Memphis is involved in redeveloping and revitalizing this area of their city and they will help low- and moderate-income families by offering affordable housing opportunities, a waiver of the market value limitation was granted in order to allow property values to be based on values in equivalent neighborhoods in other parts of the community that had already been rehabilitated. This waiver will help the City of Memphis expand affordable housing opportunities in the Greenlaw District.

7. *Regulation:* 24 CFR 280.305.

Project/Activity: Adventura East, Wilson Community Improvement Association, Inc., Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee pre-sell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted by: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 10, 1992.

Reason Waived: The grantee requested approval to establish three phases for the project. The waiver was granted in order to permit the grantee to pre-sell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to pre-sell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate-income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

8. *Regulation:* 24 CFR 280.305.

Project/Activity: Rosa Hailey Pointe Subdivision, Tift County Residential Housing Corporation, Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee pre-sell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted by: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 10, 1992.

Reason Waived: The grantee requested approval to establish three phases for the project. The waiver was granted in order to permit the grantee to pre-sell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to pre-sell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate-income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

9. Regulation: 24 CFR 280.305.

Project/Activity: Hancock Heights, Overview Housing Assistance Corporation, Nehemiah Housing Opportunity Grant Program.

Nature of Requirement: Regulations require that a grantee presell 25 percent of the total number of homes in a Nehemiah project prior to construction or substantial rehabilitation of any homes (with the exception of model homes).

Granted by: Arthur J. Hill, Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: February 19, 1992.

Reason Waived: The grantee requested approval to establish three phases for the project. The waiver was granted in order to permit the grantee to pre-sell 25 percent of the homes in each phase before beginning construction or rehabilitation of any homes in the phase. Without the waiver, the grantee would have to pre-sell 25 percent of the units in the entire project before beginning construction or rehabilitation of any of the homes. Granting the waiver would facilitate the affordable housing opportunities for low- and moderate-income families provided under the Nehemiah program by reducing the amount of time any family would have to wait in order to have work begin on their home.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 10 through 11 in this listing is: Mr. Jan C. Oppen, Field

Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street, SW., room 7270, Washington, DC 20410-7000, phone: (202) 708-2565.

10. Regulation: 24 CFR 570.200(a)(5) and 24 CFR 570.200(h).

Project/Activity: Wayne County (City of Flat Rock), Michigan. Under the Community Development Block Grant program, reimbursement of pre-agreement costs for widening, extension and construction of a street to improve access to a low-income housing facility.

Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreement, but not the acquisition cost of real property. 24 CFR 570.200(a)(5) limits pre-agreement costs to those described in subparagraph 570.200(a)(5).

Granted by: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: January 15, 1992.

Reasons Waived: The County sought a waiver of pre-agreement cost provisions in order for the City to complete widening, extension and construction of Baker Street to provide improved access for emergency vehicles to the Mayfair Apartment Complex, a 178-unit low-income housing facility, and new, direct access to local schools for the residents. Also, the City would save an estimated \$40,000 in construction costs. Failure to grant a waiver of pre-agreement costs would cause undue hardship on the residents and adversely affect the purposes of the Act.

11. Regulation: 24 CFR 576.51(a).

Project/Activity: Contra Costa County, CA; Oxnard, CA; San Joaquin, CA; Ventura County, CA; Brevard County, FL; Pasco County, FL; City and County of Honolulu, HI; State of Idaho; East St. Louis, IL; Lake County, IN; Terre Haute, IN; Baltimore County, MD; Lawrence, MA; Newton, MA; Wayne County, MI; Atlantic City, NJ; Bayonne, NJ; Gloucester County, NJ; Hudson County, NJ; Middlesex County, NJ; Ocean County, NJ; Albuquerque, NM; State of Montana; Buffalo, NY; Town of Islip, NY; Mount Vernon, NY; Nassau County, NY; Rockland County, NY; Yonkers, NY; Las Vegas, NV; Allentown, PA; Erie, PA; Reading, PA; Scranton, PA; York County, PA; Pawtucket, RI; Providence, RI; Woonsocket, RI; Memphis, TN; Bexar County, TX; Brownsville, TX; San Antonio, TX; State of Vermont; Norfolk, VA; Charleston, WV; Milwaukee, WI; American Samoa; Guam; Trust Territory of the Pacific Islands. Under the Emergency Shelter Grants program, waiver of the

application submission deadline requirements to permit submission at a later date.

Nature of Requirement: 24 CFR 576.51(a) requires that any State, or formula city or county, or Territory, that elects to receive an Emergency Shelter Grant, submit an application no later than 45 days after the date of notification of the grant allocation amount.

Granted by: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: January 21 through February 6, 1992.

Reasons Waived: Waivers were granted for the above applicants because they would have been unable to submit Comprehensive Housing Affordability Strategies (CHAS) prior to or on the date of the deadline for submission of the FY 1992 Emergency Shelter Grant application, as required. The CHAS is being submitted by applicants for the first time, as required by the National Affordable Housing Act. Not to grant a waiver of the application deadline and to extend the deadline would have caused undue hardship and would adversely affect the purposes of Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended.

Note to Reader: The person to be contacted for additional information about waiver-grant item number 12 in this listing is: Mary Maher, Acting Director, Moderate Rehabilitation Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, phone: (202) 755-4969.

12. Regulation: 24 CFR 882.806.

Project/Activity: Liberty Center II, Jacksonville, Florida.

Nature of Requirement: Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals. Regulation requires the developer to complete all rehabilitation work, and the Public Housing Agency and owner to execute the Housing Assistance Payments Contract, within 12 months of execution of the Annual Contributions Contract.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: January 28, 1992.

Reason Waived: Completion of an environmental assessment and a subsidy layering review caused delays which were beyond the control of the owner. The waiver will allow the developer the time needed to complete all rehabilitation work.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 13 through 15 in this

listing is: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, phone: (202) 708-2730.

13. *Regulation:* 24 CFR Part 885—Loans for Housing for the Elderly or Handicapped Section 885.5. Definitions, Housing and Related Facilities.

Project/Activity:

| Project name | Project No. | Regional office |
|--------------------|-------------|-----------------|
| Lancaster Commons. | 043-EH325 | Chicago. |

Nature of Requirement: The Regulations cited above prohibit Section 202 assistance for intermediate care facilities due to the traditional medical nature of such facilities.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: Waiver approved between December 1, 1991 and February 29, 1992.

Reason Waived: Often borrowers have access to service funding that would not otherwise be available if a project is designed as an intermediate care facility. Therefore, under existing Departmental procedures, a Borrower may receive a waiver if the facility is for the developmentally disabled and it provides evidence that the housing and services will not be medically oriented.

14. *Regulation:* 24 CFR 855—Loans for Housing for the Elderly or Handicapped Section 885.230. Duration of Section 202 Fund Reservation

Project/Activity:

| Project name | Project No. | Regional office |
|-------------------------|-------------|-----------------|
| Pathways Futures.... | 017-EH166 | Boston. |
| Schoolhouse Apts.... | 017-EH153 | Boston. |
| Independence Housing. | 024-EH197 | Boston. |
| Fellowship House.... | 024-EH194 | Boston. |
| Camden Oaks..... | 031-EH100 | New York. |
| Senior Hsg Clinton.. | 012-EH555 | New York. |
| HOPE Senior Housing. | 012-EH633 | New York. |
| Monsignor Fiorentino. | 012-EH622 | New York. |
| Belmont Blvd. Apts. | 012-EH665 | New York. |
| Tanya Towers II..... | 012-EH648 | New York. |
| E.G.P. Inc (Evergreen). | 045-EH092 | Philadelphia. |
| Deaf-REACH..... | 000-HH003 | Philadelphia. |
| Youth in Transition.. | 000-EH155 | Philadelphia. |
| Mercy-Douglas Sansom. | 034-EH393 | Philadelphia. |
| Hilltop Gardens..... | 051-EH162 | Philadelphia. |
| Romney Unity Apts. | 045-EH095 | Philadelphia. |
| New River Valley Homes. | 051-EH128 | Philadelphia. |
| Community Apartments. | 000-EH147 | Philadelphia. |
| Diakonia Housing.... | 034-EH312 | Philadelphia. |

| Project name | Project No. | Regional office |
|-------------------------------------|-------------|-----------------|
| Capitol Commons.... | 000-EH157 | Philadelphia. |
| Phoenix Apartments. | 083-EH248 | Atlanta. |
| Accessible Apts..... | 053-EH616 | Atlanta. |
| Prince St. Residence. | 056-EH325 | Atlanta. |
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| Danish Gardens..... | 056-EH323 | Atlanta. |
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| C.L.C. | 054-EH141 | Atlanta. |
| Independent. United Cerebral Palsy. | 062-EH240 | Atlanta. |
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| Pinellas ARC..... | 067-EH276 | Atlanta. |
| Phoenix Manor | 066-EH249 | Atlanta. |
| Lock Towns No. 1... | 066-EH253 | Atlanta. |
| Buenavista Villas.... | 066-EH255 | Atlanta. |
| Lee Mental Health... | 066-EH256 | Atlanta. |
| National Church Resid. | 066-EH257 | Atlanta. |
| Broadway Towers.... | 066-EH260 | Atlanta. |
| GIBB Village Bay County. | 063-EH209 | Atlanta. |
| GIBB of Leon County. | 063-EH211 | Atlanta. |
| Adult Community Training. | 087-EH175 | Atlanta. |
| Memphis Community Hsg. | 081-EH140 | Atlanta. |
| Progressive Manor... | 086-EH145 | Atlanta. |
| The Center Apts..... | 071-EH545 | Chicago. |
| Paradise Haven Homes. | 071-EH537 | Chicago. |
| West Haven of Englewood. | 071-EH536 | Chicago. |
| Builders of Skills..... | 071-EH541 | Chicago. |
| Muncie Place..... | 073-EH306 | Chicago. |
| Northwest Chicago GH. | 071-EH544 | Chicago. |
| Trinity Oaks..... | 071-EH540 | Chicago. |
| Cincinnati VOA | 046-HH007 | Chicago. |
| Broadway Project.... | 046-HH011 | Chicago. |
| Liberty Apartments.. | 046-HH008 | Chicago. |
| Marycrest Village.... | 071-EH511 | Chicago. |
| Jane Dent-Alone | 071-EH347 | Chicago. |
| Feamon. Sojourner Truth Apts. | 071-EH440 | Chicago. |
| Aurora Residential... | 071-EH487 | Chicago. |
| Asi-Brainerd Barrier. | 092-EH250 | Chicago. |
| Willmar Housing | 092-EH260 | Chicago. |
| HM & Community Options. | 092-EH258 | Chicago. |
| Jacksonville Samaritan. | 073-EH291 | Chicago. |
| Phoenix Villa Superior. | 075-EH365 | Chicago. |
| Deliverance Manor... | 071-EH500 | Chicago. |
| Bobby Wright Hsg... | 071-EH501 | Chicago. |
| Community Alternatives. | 071-EH524 | Chicago. |
| Humboldt Park Elderly. | 071-EH430 | Chicago. |
| Des Moines RHF..... | 074-EH184 | Kansas City. |

Nature of Requirement: The Regulations cited above require the Department of Housing and Urban Development to cancel any Section 202 fund reservation for which construction, rehabilitation or acquisition has not begun within 24 months after the Notice

of Section 202 Fund Reservation is issued, unless a 12-month extension is granted by the Regional Administrator, for a total maximum 36-month period.

Granted by: Arthur J. Hill, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: Waivers approved between December 1, 1991 and February 29, 1992.

Reason Waived: Circumstances beyond the control of the Section 202 Borrowers delayed project development within the maximum period of 36 months. Further, sponsors had expended substantial funds to bring the projects to construction starts and development of these units furthered the Secretary's goal of expanding affordable housing opportunities. Waivers of this section granted authority to extend these fund reservations beyond 24 months to allow additional time to reach construction starts.

15. *Regulation:* 24 CFR 885.810(c)(3)(i)—High Cost Percentage.

Project Activity:

| Project name | Project No. | Regional office |
|------------------|-------------|-----------------|
| Edison Arms..... | 012-EH692 | New York. |

Nature of Requirement: The Regulation cited above states that the Assistant Secretary may increase the cost limits set forth in paragraph (c) (1) and (2) of this section by up to 110 percent in any geographic area where the cost levels require, and may increase the cost limits by up to 140 percent on a project-by-project basis. Waivers of this section grant authority to increase the cost limits by up to 160 percent on a project-by-project basis for specific HUD Offices where development costs are consistently higher than anywhere else in the nation.

Granted by: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 19, 1991.

Reason Waived: The waiver was granted because if the waiver was not granted it would have caused hardship to the Borrower which has expended substantial funds to reach this stage of processing. Further, if the project is cancelled, the funds will be lost and this much needed housing would not be built. Granting the waiver is in the public interest and is consistent with both programmatic objectives and the Secretary's goal of increasing affordable housing opportunities for low income families.

Note to Reader: The person to be contacted for additional information about the waiver-

grant item number 16 in this listing is: Gerald Benoit, Director, Rental Assistance Division, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6128, Washington, DC 20410, phone: (202) 708-0477.

16. *Regulation:* 24 CFR 887.165.

Project/Activity: Virginia Housing Development Authority.

Nature of Requirement: The term of a rental voucher cannot exceed 120 days.

Granted by: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: January 8, 1992.

Reason Waived: To permit the Virginia Housing Development Authority to extend the 120-day term of rental vouchers held by families residing in the Valley Vista Apartments, a Section 8 loan management project located in Woodstock, Virginia. The owner's right to opt-out of the section 8 contract is currently under litigation.

Note to Reader: The person to be contacted for additional information about waiver-grant items numbered 17 through 22 in this listing is: Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708-1015.

17. *Regulation:* 24 CFR 905.404(a), 24 CFR 905.407(b)(1)(3), 24 CFR 905.407(c), 24 CFR 905.410, 24 CFR 905.413 (a), (b) and (d), 24 CFR 905.416 (c) and (d), 24 CFR 905.419 (b) and (c), 24 CFR 905.422, 24 CFR 905.440(b) (1) and (2), 24 CFR 905.503(c)(i).

Project/Activity: Conversion of 5 Turnkey III units to the Mutual Help Homeownership Opportunity Program by the Ft. Peck Indian Housing Authority in Poplar, MT.

Nature of Requirement: The Regulations cited above apply to the construction, development, funding and occupancy of new construction developments. Therefore, waivers are required to convert existing units funded and built under one program to operation under a different program.

Granted by: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 30, 1991.

Reason Waived: This action was requested, and granted, because many of these homebuyers have been in their Turnkey III units since they were built and through the years have increased their income. Converting the participants to the Mutual Help Program will enable them to become homeowners sooner because their payments will be applied to the purchase price of their homes instead of going to the project reserve.

18. *Regulation:* 24 CFR 905.404(a), 24 CFR 905.407(b)(1)(3), 24 CFR 905.407(c), 24 CFR 905.410, 24 CFR 905.413 (a), (b)

and (d), 24 CFR 905.416 (c) and (d), 24 CFR 905.419 (b) and (c), 24 CFR 905.422, 24 CFR 905.440(b) (1) and (2).

Project/Activity: Conversion of 1 Rental Unit to the Mutual Help Homeownership Opportunity Program by the Fort Peck Housing Authority in Poplar, Montana.

Nature of Requirement: The Regulations cited above apply to the construction, development, funding and occupancy of new construction developments. Therefore, waivers are required to convert an existing unit funded and built under one program to operation under a different program.

Granted by: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: January 7, 1992.

Reason Waived: This action was requested, and granted, because a resident in the rental program was able and willing to meet all obligations of the Mutual Help Homeownership Opportunity Program. However, there was not sufficient Mutual Help housing available to transfer the resident and financing was not available to purchase a home in the private market. Converting the participant to the Mutual Help Program will enable the family to become homeowners.

19. *Regulation:* 24 CFR 905.404(a), 24 CFR 905.407(b)(1)(3), 24 CFR 905.407(c), 24 CFR 905.410, 24 CFR 905.413 (a), (b) and (d), 24 CFR 905.416 (c) and (d), 24 CFR 905.419 (b) and (c), 24 CFR 905.422, 24 CFR 905.440(b) (1) and (2), 24 CFR 905.503(c)(i).

Project/Activity: Conversion of 48 Turnkey III Units to the Mutual Help Homeownership Opportunity Program by the Metlakatla Housing Authority in Metlakatla, Alaska.

Nature of Requirement: The Regulations cited above apply to the construction, development, funding and occupancy of new construction developments. Therefore, waivers are required to convert existing units funded and built under one program to operation under a different program.

Granted by: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: January 8, 1992.

Reason Waived: This action was requested, and granted, because many of these homebuyers have been in their Turnkey III units since they were built and through the years have increased their income. Converting the participants to the Mutual Help Program will enable them to become homeowners sooner because their payments will be applied to the purchase price of their homes instead of going to the project reserve.

20. *Regulation:* 24 CFR 905.404(a), 24 CFR 905.407(b)(1)(3), 24 CFR 905.407(c),

24 CFR 905.410, 24 CFR 905.413 (a), (b) and (d), 24 CFR 905.416 (c) and (d), 24 CFR 905.419 (b) and (c), 24 CFR 905.422, 24 CFR 905.440(b), (1) and (2), 24 CFR 905.503(c)(i).

Project Activity: Conversion of 16 Turnkey III units to the Mutual Help Homeownership Opportunity Program by the Lac du Flambeau Chippewa Housing Authority in Lac du Flambeau, Wisconsin.

Nature of Requirement: The Regulations cited above apply to the construction, development, funding and occupancy of new construction developments. Therefore, waivers are required to convert existing units funded and built under one program to operation under a different program.

Granted by: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: January 8, 1992.

Reason Waived: This action was requested, and granted, because many of these homebuyers have been in their Turnkey III units since they were built and through the years have increased their income. Converting the participants to the Mutual Help Program will enable them to become homeowners sooner because their payments will be applied to the purchase price of their homes instead of going to the project reserve.

21. *Regulation:* 24 CFR 905.44(c). Northern Circle Indian Housing Authority.

Project Activity: Establishment of purchase price schedules for ten subsequent homebuyers in the Mutual Help Homeownership Opportunity Program based on the current replacement cost only.

Nature of Requirement: The Regulation cited above requires that the purchase price schedule for a subsequent homebuyer shall be the lower of the current appraised value or the current appraised value or the current replacement cost of the home, both as determined or approved by HUD.

Granted by: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: December 11, 1991.

Reason Waived: This action was requested, and granted, because the Northern Circle Indian Housing Authority has been unable to obtain a current appraisal on these units due to unsatisfactory experience with fee appraisers. Also, the Phoenix Office of Indian Programs does not have the manpower to conduct such an appraisal.

22. *Regulation:* 24 CFR 905.44(c). Shoshone Joint Housing Authority.

Project/Activity: Establishment of purchase price schedule for ten

subsequent homebuyer in the Mutual Help Homeownership Opportunity Program based on the current replacement cost only.

Nature of Requirement: The Regulation cited above requires that the purchase price schedule for a subsequent homebuyer shall be the lower of the current appraised value or the current replacement cost of the home, both as determined or approved by HUD.

Granted by: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: January 3, 1992.

Reason Waived: This action was requested, and granted, because the Shoshone Joint Housing Authority has been unable to obtain a current appraisal on these unit due to an ability to contract with a local fee appraiser. Also, the Phoenix Office of Indian Programs does not have the manpower to conduct such an appraisal.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 23 through 25 in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708-1872.

23. **Regulation:** 24 CFR 990.109(b)(3)(iv).

Project/Activity: Chester Housing Authority, Chester PA.

Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy

Plan (COP) to use a projected occupancy percentage of 97%.

Granted by: Joseph G. Schiff, Assistant Secretary.

Date Granted: January 10, 1992.

Reason Waived: The PHA didn't submit a Comprehensive Occupancy Plan when first eligible but the management responsible for this neglect was removed when HUD assumed control of the Agency in November. A private management firm has now been hired and is expected to develop a Memorandum of Agreement (MOA) for HUD's approval and to address the vacancy problems in a responsible manner. PHA was allowed to use its actual occupancy percentage for its fiscal years ending in 1991 and 1992, and a percentage for 1993 to be established through the MOA process.

24. **Regulation:** 24 CFR 990.110(c).

Project/Activity: San Francisco Housing Authority.

Nature of Requirement: Public Housing Agencies must pay back any savings that result from utility rate decreases as compared to the budgeted amount for that year.

Granted by: Joseph G. Schiff, Assistant Secretary.

Date Granted: December 12, 1991.

Reason Waived: In 1978, the San Francisco Housing Authority entered into a contract with National Utility Service, Inc., (NUS) seeking recommendations for reducing its utility bills. Pursuant to the contract, NUS was to retain 50% of any savings/refunds resulting from its recommendations over a period of several years. The SFHA did

not take into consideration at the time that rate savings are recovered dollar-for-dollar by HUD under the PFS regulation at § 990.110(c) and the Authority was left with no source of funds to meet the liability of payments due the NUS as well as the balance due on a judgment against the SFHA in favor of the NUS. Since the cumulative rate savings to HUD were greater than the amount requested by the SFHA to meet its liability, and the rate savings continue, a one-time waiver of § 990.110(c) was granted for an adjustment to permit reinstatement to the Authority of that amount.

25. **Regulation:** 24 CFR 990.110(c).

Project/Activity: Beaver County, PA Housing Authority.

Nature of Requirement: Public Housing Agencies must pay back any savings that result from utility rate decreases as compared to the budgeted amount for that year.

Granted by: Joseph G. Schiff, Assistant Secretary.

Date Granted: November 22, 1991.

Reason Waived: The Housing and Community Development Act of 1987 directs that 24 CFR part 990 be changed to allow incentives for PHAs which negotiate alternative purchase arrangements to obtain their utilities for the lowest possible price. This waiver was granted in order to comply with Congressional intent pending the effective date of a final rule implementing this change.

[FR Doc. 92-8091 Filed 4-7-92; 8:45 am]

BILLING CODE 4210-32-M

Testis great Federal report

Wednesday
April 8, 1992

Part VIII

The President

Executive Order 12798—Waiver Under
the Trade Act of 1974 With Respect to
Armenia

Wednesday
April 8, 1932

Part VIII

The President

Annals
the Trade Act of 1874 With Respect to
Executive Order 13798—Waiver Under

Presidential Documents

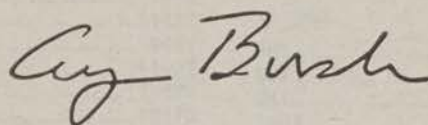
Title 3—

Executive Order 12798 of April 6, 1992

The President

Waiver Under the Trade Act of 1974 With Respect to Armenia

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2432(c)(2)), which continues to apply to Armenia pursuant to section 402(d) of the Act, and having made the report to the Congress required by section 402(c)(2) of the Act, I hereby waive the application of sections 402(a) and 402(b) of the Act with respect to Armenia.



THE WHITE HOUSE,
April 6, 1992.

[FR Doc. 92-8305

Filed 4-7-92; 11:06 am]

Billing code 3195-01-M

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Executive Order 12798 of April 6, 1993

Whereas the Trade Act of 1974 with respect to America

the authority vested in me as President by the Constitution and the laws of the United States of America, requiring certain sections of the Trade Act of 1974 as amended, Act (19 U.S.C. 2201-2291), which contains the authority to promulgate in section 101 of the Act, and having made the report to the Congress required by section 101 of the Act, I hereby order the Secretary of Commerce to promulgate the Act with respect to America.

Jeff. B. B.

THE WHITE HOUSE

April 6, 1993

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